

Public redacted version of the Annex 1 of  
ICC-01/04-02/06-2750-Conf-Anx1,  
notified on 25 March 2022



**Fonds au Profit des Victimes**  
**The Trust Fund for Victims**



**Draft Implementation Plan (“DIP”)**  
**of the Trust Fund for Victims**  
**for the collective reparations awarded to the**  
**victims of the crimes for which Mr Bosco**  
**Ntaganda has been convicted by the**  
**International Criminal Court**

v.2.0 – 24 March 2022

v.1.0 – 17 December 2021

ICC-01/04-02/06-2659 08-03-2021 97/97 RH

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY, UNANIMOUSLY**

**ISSUES** an Order for Reparations against Mr Ntaganda;

**ORDERS** collective reparations with individualised components to be awarded to direct and indirect victims of the crimes for which Mr Ntaganda was convicted, as specified in the present Order;

**ASSESSES Mr Ntaganda’s liability for these reparations at USD 30,000,000;**

**SETS** the deadlines for the TFV to submit its general draft implementation plan to 8 September 2021, and the deadline for the TFV to submit an urgent plan for the priority victims to 8 June 2021, at the latest;

**FINDS** Mr Ntaganda indigent for the purposes of reparations at the time of the present Order;

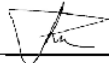
**REQUESTS** the Presidency’s assistance, with the support of the Registry, to continue exploring whether Mr Ntaganda possesses any undiscovered assets and to monitor Mr Ntaganda’s financial situation on an ongoing basis; and

**VACATES** the deadline for the Registry to report to the Chamber, as set out in the First Decision.

Done in both English and French, the English version being authoritative.



Judge Chang-ho Chung, Presiding Judge



Judge Robert Fremr



Judge Olga Herrera Carbuccion

Dated this Monday, 8 March 2021

At The Hague, The Netherlands

No. ICC-01/04-02/06

97/97

8 March 2021

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## I. INTRODUCTION

1. On 8 March 2021, the Trial Chamber issued an order for reparations (“Reparations Order”) against Mr Ntaganda, ordering that collective reparations with individualised components be awarded to direct and indirect victims of the crimes he committed, setting the amount of his liability to USD 30 million and instructing the Trust Fund for Victims (“Trust Fund” or “TFV”) to develop a draft implementation plan for reparations.<sup>1</sup> Accordingly, the Trust Fund is seized pursuant to regulation 50(b) of the Regulations of the Trust Fund.
2. Pursuant to Regulations 54 and 57 of the Trust Fund, and in line with the Trial Chamber’s instruction,<sup>2</sup> the Trust Fund hereby presents its second version of the draft implementation plan (“DIP”) as approved by the Board of Directors.
3. The present plan has been prepared having regard to the applicable legal framework, that is Regulations 55 to 58 and 69 to 72 of the Regulations of the Trust Fund governing the implementation of collective reparations through the Trust Fund pursuant to Rule 98(3).
4. The DIP is responsive to the Trial Chamber’s instruction directing that the plan includes:<sup>3</sup>
  - a. The objectives, outcomes, and activities identified as necessary to give effect to the Reparations Order;
  - b. The reparation projects the TFV intends to develop, indicating the details of the proposed collective awards, each of the collective projects with individualised components, and the modalities of reparations considered appropriate to address each of the harms;
  - c. The methods of implementation, steps to be taken, direct and indirect costs, the expected amount that the TFV will use to complement the awards, and the expected timeline necessary for the projects’ development and implementation;
  - d. A detailed proposal as to the way in which it expects to conduct the administrative eligibility assessment.

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<sup>1</sup> *The Prosecutor v. Bosco Ntaganda*, Trial Chamber VI, Reparations Order, 08 March 2021, [ICC-01/04-02/06-2659](#) (‘Reparations Order’).

<sup>2</sup> Reparations Order, disposition. The deadline was originally set to 8 September 2021. On 23 July 2021, the Trial Chamber granted a Trust Fund’s request for extension of time and set the deadline for submission of the DIP to 17 December 2021 (Decision on the Trust Fund for Victims’ Request to Vary the Time Limit to Submit Draft Implementation Plan, 23 July 2021, ICC-01/04-02/06-269).

<sup>3</sup> Reparations Order, para. 249.

5. Victims in the *Ntaganda* case are, on the one hand, victims of crimes against child soldiers (“Former Child Soldiers”) who formed part of the armed forces of the Union des Patriotes Congolais/Forces Patriotiques pour la Libération du Congo (“UPC/FPLC”).<sup>4</sup> The UPC/FPLC had the “common plan to drive out all the Lendu from the localities targeted during the course of the UPC/FPLC’s military campaign against the Rassemblement Congolais pour la Démocratie Kisangani Mouvement de Libération (“RCD-K/ML”), and to prevent them from returning to the assaulted localities”;<sup>5</sup> accordingly, the targeted Lendu population as well as related ethnic groups, such as the Ngiti, belong to the other group of victims in this case (“Victims of the Attacks”). Victims of these two groups applied to participate in the proceedings and were allowed to participate, thereby showing *prima facie*<sup>6</sup> that they are victims of the charges against Mr Ntaganda. A total of 1,837 Victims of the Attacks, including 776 female victims and 1061 male victims, and 284 Child Soldiers, including 62 female victims and 222 male victims, participated in the trial proceedings.<sup>7</sup> The participating victims are represented respectively by two legal representatives (“CLR’s”): the CLR2 for the Victims of the Attacks, and the CLR1 for the Former Child Soldiers.

6. While the Trial Chamber left ample discretion to the Trust Fund in the design of the implementation plan, it provided specific directions throughout the Reparations Order, for instance the instruction to consult victims as to whether they deem it appropriate to affix a sign at the Sayo health centre that this health centre enjoys special protection under International Humanitarian Law.<sup>8</sup> The Trust Fund provides specific information on the directions provided by the Trial Chamber in its draft implementation plan.

7. In response to the requirements of the Trial Chambers, and in consideration of contextual and other operational parameters, such as the availability of financial resources, the Trust Fund has developed the DIP in the form of a programme that is built on a logical framework. This framework seeks to capture the purpose of the Reparations Order into an overall objective, to set the related programme outcomes, and to describe how the proposed modalities of reparations and their related reparation measures contribute to these outcomes.

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<sup>4</sup> Child Soldiers are victims of conscription and enlistment between on or about 6 August 2002 and 31 December 2003 as well as victims who were used to participate actively in hostilities between on or about 6 August 2002 and on or about 30 May 2003, with respect to the participation in the first Operation in May 2003, victims who were used as bodyguards for UPC/FPLC soldiers and commanders and those who were used to gather information about the opposing forces and MONUC personnel.

<sup>5</sup> Reparations Order, para. 25.

<sup>6</sup> Decision on victims’ participation in trial proceedings, 6 February 2015, ICC-01/04-02/06-449, para. 44.

<sup>7</sup> Reparations Order, para. 22.

<sup>8</sup> Reparations Order, para. 208.

8. The Trust Fund understands the purpose of the Reparations Order to enable the journey of beneficiaries, insofar as possible in the concrete circumstances of the case: from victimisation to rights-based empowerment and dignity, and from enduring harm, to achieving resilience. The *agency* of victim beneficiaries to own this change is of essential reparative value and speaks to the transformative quality of reparations as incorporated in the Court's Reparations Principles. As a consequence, the description of reparations measures will leave space for certain specific activities to be developed in more detail between the Trust Fund and the implementing partners, first as part of the procurement procedure (scope of work and technical proposal) and then throughout the implementation of the reparation programme, when beneficiaries should directly express their individual needs and preferences enabling their healing and recovery. The Trust Fund intends to inform the Trial Chamber and parties of these developments in its periodic update reports. Major necessary changes would be raised separately, in order to obtain the views of the Trial Chamber and parties prior to their implementation.

## II. CONTEXT RELEVANT TO THE PLACE OF IMPLEMENTATION

10. This DIP has been prepared to take into account that it will be implemented in Ituri Province, in the DRC, in a context where the Court and Trust Fund are already operating and that is currently the theatre of an active conflict between various armed groups. These circumstances inform the proposals for adequate reparations and are briefly presented below. A more detailed analysis of the situation in the DRC and Ituri Province and of the interventions of the international community are included in Attachment 1.

### A. Other ICC cases

11. The *Ntaganda* Conviction Decision and Reparations Order relate to a conflict in Ituri that is still ongoing and involves different armed groups. The cases charged before the ICC concern primarily events that opposed the Hema and related groups, such as the Alur, led by Mr Lubanga, and the Lendu and related groups, such as the Ngiti. The OTP addressed the conflict by prosecuting the attack on Bogoro in February 2002, where primarily inhabitants of Hema ethnicity lived in the case *Prosecutor v. Katanga and Ngudjolo* and by prosecuting the inclusion of primarily Hema and Alur child soldiers in the cases *Prosecutor v. Lubanga* and *Prosecutor v. Ntaganda*. Once Mr Ntaganda was apprehended in 2013, the Prosecutor also included charges against him for attacking the Lendu and Ngiti population that lived primarily in Djugu territory.<sup>9</sup> Accordingly, while the victim population in relation to child soldiers is the same for the Child Soldiers in both *Prosecutor v. Lubanga* and *Prosecutor v. Ntaganda*, the victims of the attacks, i.e. primarily Lendu population, are only addressed in *Prosecutor v. Ntaganda*.

### B. Trust Fund's activities in Ituri Province

12. The Trust Fund is currently conducting activities in Ituri Province both under its assistance mandate and pursuant to Reparations Orders in other cases. In the *Lubanga* case, the Trust Fund is at the implementation stage with 215 beneficiaries having benefitted from mental health and/or physical health measures as well as/or socio-economic rehabilitation since their intake in July 2021 and the signature of the contract with the implementing partner on 15 March 2021.

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<sup>9</sup> ICC-01/04-02/06-2.

13. In the *Katanga* case, the Trust Fund is nearing the completion of the implementation of reparations. It has completed the provision of individual symbolic compensation awards to the beneficiaries in 2017/2018 and an important part of the collective reparation awards, such as the payment of school fees for dependants (from 2019 to 2021), and provision of income generating activities (“IGAs”), such as cattle, provision of other goods (from 2019 to 2021). Other collective reparation activities relevant to housing and psychological support are still ongoing in 2022.

14. The Trust Fund is currently implementing urgent measures for the benefit of priority victims in the *Ntaganda* case, pursuant to the Initial Draft Implementation Plan (“IDIP”)<sup>10</sup> presented on 8 June 2021<sup>11</sup> and partly approved on 23 July 2021<sup>12</sup> and on 29 October 2021.<sup>13</sup> The approved two projects are currently starting with an intake of a limited number of beneficiaries, who are priority victims, determined by the Trust Fund over the past weeks, to be in urgent need. They will provide the beneficiaries with psychological and physical rehabilitation and material support.

15. The Trust Fund has five assistance projects in Ituri Province, which are providing physical rehabilitation (including for victims of sexual and gender-based violence), psychological rehabilitation and socio-economic measures under the assistance mandate. These projects are part of the Trust Fund’s DRC assistance programme that started in May 2020 for a five-year cycle with a total of ten projects in Ituri Province, North Kivu and South Kivu. The Trust Fund will continue into the third year of the assistance programme with seven of the original ten projects. The Trust Fund conducted prior thereto (since 2008) its first assistance programme cycle in these provinces.

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<sup>10</sup> The Trial Chamber and the participants used the full title ‘initial draft implementation plan’, hence the acronym ‘IDIP’; therefore, the Trust Fund will adopt this abbreviation in these observations.

<sup>11</sup> [Public redacted version of “Report on Trust Fund’s Preparation for Draft Implementation Plan”, submitted on 8 June 2021](#), ICC-01/04-02/06-2676-Red, with [Annex A, Public redacted version of “Initial Draft Implementation Plan with focus on Priority Victims”](#), ICC-01/04-02/06-2676-AnxA-Corr-Red (the ‘Initial Draft Implementation Plan’).

<sup>12</sup> Decision on the TFV’s initial draft implementation plan with focus on priority victims, 23 July 2021, [ICC-01/04-02/06-2696](#).

<sup>13</sup> Decision on TFV’s first progress report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Director’s decision pursuant to regulation 56 of the Regulations of the Trust Fund (the ‘Decision on TFV’s first progress report’), [ICC-01/04-02/06-2718-Conf](#). 23 September 2021 and 23 November 2021 respectively, the Trust Fund submitted its first and second update reports on the IDIP (Trust Fund first progress report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Director’s decision pursuant to regulation 56 of the Regulations of the Trust Fund, [ICC-01/04-02/06-2710-Conf](#); Trust Fund’s Second Update report on the Implementation of the Initial Draft Implementation Plan, [ICC-01/04-02/06-2723-Conf](#)).

### C. Current conflict: Martial law and displaced population

16. In relation to the Defence's assertion that the Trust Fund has not sufficiently elaborated on the security situation,<sup>14</sup> the Trust Fund refers to the below section. The security situation is a paramount concern of the Trust Fund. Standard good practices in terms of security require constant monitoring and adjustment. An attempt to provide a definitive security assessment would be at odds with the volatility of the security situation, as well as the multi-annual scope of the reparation programme. Trust Fund staff members work from the Bunia Office of the Court, fully adhere to the Court's security protocols, and are guided and bound by the advice and directives from the Court in relation to the security situation in Ituri. The Trust Fund wishes to reassure the Defence that no decision can be and will be taken by the Trust Fund without the Trial Chamber's approval should they have an impact on the Defence's interest.

17. Since the issuance of the Reparations Order, the security environment continued to deteriorate in Djugu territory and most notably in the south of Irumu territory. In the Trust Fund's view, the situation is currently one of an active internal conflict, with considerable casualties and serious life-threatening risks for victims and humanitarian actors, including potentially within Bunia itself.

18. Near Bunia town, the situation initially deteriorated, until it improved after martial law was declared by President Tshisekedi on 6 May 2021. The latter declared a state of siege over the escalating violence in the provinces of Ituri and North Kivu, replacing the civil administration with a military administration with a view of ending the insecurity in the area through military operations. The state of siege has been prolonged on a regular basis.

19. Following the initial sweeping operations by the Armed Forces of the DRC ("FARDC"), FARDC operations reportedly stabilised the situation enabling the Trust Fund to hold consultations in the *Ntaganda* case in May and June and to relaunch, in June 2021, implementation activities in the *Katanga* case taking place in Bunia for beneficiaries residing outside of the city.

20. However, the security situation is to date volatile and rapidly deteriorated over the past months particularly in Djugu and Irumu territories, notably close to Bunia, leading to important population displacement. The killings and attacks on the local population have not stopped despite the presence of the FARDC. Attacks by various armed groups against positions of the FARDC continue, and in some territories, for instance, in Djugu and Mahagi territories, the situation has worsened with several people fleeing their homes and settling in displacement

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<sup>14</sup> Defence Additional Matters, ICC-01/04-02/06-2740-Conf, para. 7.

camps. In Djugu territory, the main hotspots continue to be in Walendu Tatsi, Walendu Djatsi, Walendu Pitsi as well as the mining area around Banyali Kilo *groupement*. The current security situation led non-governmental organisations (“NGOs”) and international organisations to stop their operations at the beginning of November, insofar as their activities required taking the road leading to most of the localities where Victims of the Attacks usually reside.

21. As further background, according to the United Nations Office for the Coordination of Humanitarian Affairs (“UNOCHA”), more than 1.11 million people are estimated to be displaced in Ituri, *including* 651.75 thousand children, out of a total population of 5.7 million people, which is almost always the result of ongoing conflicts.<sup>15</sup>

22. UNOCHA has also estimated that, as of January 2021, 2.8 million people were in need of humanitarian assistance in Ituri,<sup>16</sup> while as of January 2022, this number evolved to 3 million people,<sup>17</sup> making it the most affected province in the DRC. 1.6 million people were targeted in the 2021 Humanitarian Response Plan, therefore necessitating a budget of 343.2 million US dollars, and the cooperation of 89 operational partners,<sup>18</sup> while in 2022, the 2022 Humanitarian Response Plan is still aiming to help 1.6 million people in need, however, it now necessitates a budget of 415.9 million US dollars in this respect.<sup>19</sup>

23. Specifically concerning children, UNICEF reported that, as of April 2021, 275 children (including 118 girls) had been separated from their parents throughout Ituri, and that attacks

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<sup>15</sup> UNOCHA, *République démocratique du Congo, Personnes déplacées internes et retournées*, report last updated on the 23 March 2022 based on data provided by EHTools, IOM DTM and humanitarian partners, collected by evaluations and validated by the *Commissions de Mouvements des Populations* of these provinces within the last 24 months for internally displaced persons and 18 months for the persons who returned to their domiciles, accessible at <https://app.powerbi.com/view?r=eyJrIjoiMDYwMDk3Y2UtNzRkNy00MTMxLTljYmMtMTJkZjBmYzAwNzIhliwidCI6IjBmOWUzNWwzLTU0NGYtNGY2MCIiZGNjLTVIYTQxNmU2ZGM3MCIiImMiOjh9>. See also UNICEF, Recent surge in violence in DRC’s Ituri province worsening already desperate situation for children, Press release, 26 April 2021, accessible at <https://www.unicef.org/press-releases/recent-surge-violence-drcs-ituri-province-worsening-already-desperate-situation>

<sup>16</sup> UNOCHA, *Plan de réponse humanitaire, République démocratique du Congo*, January 2021, accessible at [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/hrp\\_2021-vf\\_28\\_janvier\\_web\\_ok-links1.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/hrp_2021-vf_28_janvier_web_ok-links1.pdf), p. 142.

<sup>17</sup> UNOCHA, *Plan de réponse humanitaire, République démocratique du Congo*, January 2022, accessible at [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/hrp\\_2022-janvier-v2-finale-web.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/hrp_2022-janvier-v2-finale-web.pdf), p. 137.

<sup>18</sup> UNOCHA, *Plan de réponse humanitaire, République démocratique du Congo*, January 2021, accessible at [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/hrp\\_2021-vf\\_28\\_janvier\\_web\\_ok-links1.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/hrp_2021-vf_28_janvier_web_ok-links1.pdf), p. 142.

<sup>19</sup> UNOCHA, *Plan de réponse humanitaire, République démocratique du Congo*, January 2022, accessible at [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/hrp\\_2022-janvier-v2-finale-web.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/hrp_2022-janvier-v2-finale-web.pdf), p. 137.

on schools had left almost 400,000 already displaced and returning children aged from 6 to 11 out of school in the territories of Djugu, Irumu and Mahagi.<sup>20</sup>

24. UNICEF also reported that, as of April 2021, more than 100,000 children under five were suffering from severe acute malnutrition, as a result of the extremely high levels of food insecurity that affects around 800,000 people, and that only one in three people in the province has access to basic sanitation services.<sup>21</sup>

25. Finally, more recently, in December 2021, UNICEF reported that up to 75,000 displaced people, including 35,000 children, were living in extremely precarious conditions in a remote and inaccessible hilltop camp for displaced people in Ituri.<sup>22</sup>

#### **D. Consequences for the DIP**

26. The context described above and in Attachment 1 are external elements, outside the sphere of influence of the Trust Fund. Ideally, for the Trust Fund, its partners and in particular for the recovery of the victims, a reparation programme operates in a setting of peace, not of conflict. The risks relating to establishing and successfully running a reparation programme in such a context are addressed below in Part VI.

27. In addition, the Trust Fund would, again under ideal circumstances, closely cooperate with the relevant government structures in order to create a conducive environment for the process of repair of the victims. Even though the current circumstances do not allow for such an environment, the Trust Fund has started to tighten its links with the DRC government to be able to advocate for as much support as possible, once the conflict may subside.

28. Similarly, due to the very high number of displaced persons and the ongoing conflict, the Trust Fund will not be able, at least at the start, to embed its programme into the communities and within civil society in the same way as it would have done otherwise.

29. The Trust Fund works closely and cooperates with the international organizations active in the region for humanitarian reasons. In developing the DIP, the Trust Fund has consulted

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<sup>20</sup> UNICEF, Recent surge in violence in DRC's Ituri province worsening already desperate situation for children, Press release, 26 April 2021, accessible at <https://www.unicef.org/press-releases/recent-surge-violence-drcs-ituri-province-worsening-already-desperate-situation>.

<sup>21</sup> UNICEF, Recent surge in violence in DRC's Ituri province worsening already desperate situation for children, Press release, 26 April 2021, accessible at <https://www.unicef.org/press-releases/recent-surge-violence-drcs-ituri-province-worsening-already-desperate-situation>.

<sup>22</sup> UNICEF, Up to 75,000 people living in a remote camp in eastern DRC facing 'hellish conditions', Press release, 08 December 2021, accessible at <https://www.unicef.org/press-releases/75000-people-living-remote-camp-eastern-drc-facing-hellish-conditions>.

with them and their international and national partners (often NGOs) with experience in the region.

30. As set out above, the DIP is a living document. As a plan, it must allow for substantive evolution, as time passes and events unfold. Accordingly, the Trust Fund stands ready to submit a third version upon issuance of the Appeals Chamber's judgement on the appeals pending before it. The Trust Fund avers that a careful analysis of the appeals judgement will be required prior to setting a timeline for the submission of such a third version.<sup>23</sup>

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<sup>23</sup> Defence Additional Matters, ICC-01/04-02/06-2740-Conf, para. 8(i).

### III. THE IMPLEMENTATION AND FUNDING ROLES OF THE TFV

31. Implementing and funding Court-ordered reparations is a process with several phases. Once the Trial Chamber issues the order for reparations and if, as in this case, the award is made through the Trust Fund pursuant to article 75 of the Statute and rule 98(3) of the Rules of Procedure and Evidence, the Trust Fund is considered seized, as provided for in regulation 50(b) of the Regulations of the Trust Fund. In this case, the amount for which the convicted person has been held liable is USD 30 million. While this liability amount is informing the development of the DIP, the Trust Fund observes that this determination, at the time of submission, is under appeal by the Defence as well as by the CLR2, the latter arguing that the number of victims is much higher than estimated by the Trial Chamber.

#### A. The financial context

32. Mr Ntaganda is considered indigent.<sup>24</sup> Accordingly, the only way of financing the reparation programme is pursuant to regulation 56 of the Regulations of the Trust Fund. This regulation provides that the Board of Directors of the Trust Fund “shall determine whether to complement the resources collected through awards for reparations with ‘other resources of the Trust Fund’ and shall advise the Court accordingly”. In 2021, the Board of Directors decided on a first complement in the case of Ntaganda of EUR 1.5 million, and received a contribution from Australia that amounts to EUR 189,013, earmarked to address sexual and gender-based violence (“SGBV”) harm in the *Ntaganda* case.

33. In the case of *Lubanga*, which concerns the same group of Former Child Soldiers as in the case of *Ntaganda*, the liability amount is USD 10 million. To date, given Mr Lubanga’s indigence, the Trust Fund’s complement stands EUR 4.425 million.

34. The highest annual revenue of the Trust Fund has been EUR 4.5 million, in 2013. In recent years, annual revenue has been in a lower range – EUR 2 to 2.7 million, with the donor market being depressed due to the COVID-19 pandemic. The consequences of the war in Ukraine may have a bearing, as yet unknowable, on the ability of European donor State Parties to make voluntary contributions to the TFV. Starting in February 2022, it can be expected that donors of WEOG states, which are the main donors of the TFV, will primarily channel their funds to the refugees and victims of this crisis. The Trust Fund is developing a fundraising

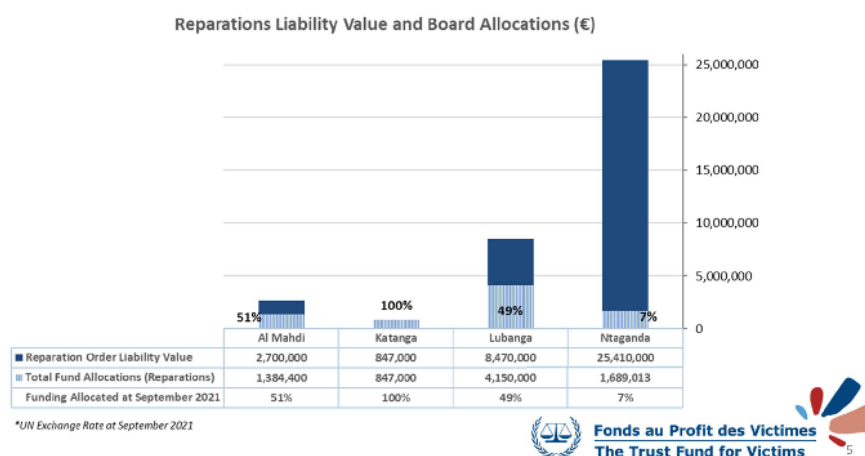
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<sup>24</sup> Reparations Order, para. 254.

strategy in 2022 with a view to cater for its rising funding needs, including in the *Ntaganda* and *Lubanga* reparation cases. In addition, the *Ongwen* case with an even higher number of victims, will likely also require funding by the Trust Fund.

35. The overview of current Trust Fund complements in reparation cases with indigent convicted persons is as presented in the table below (December 2021).

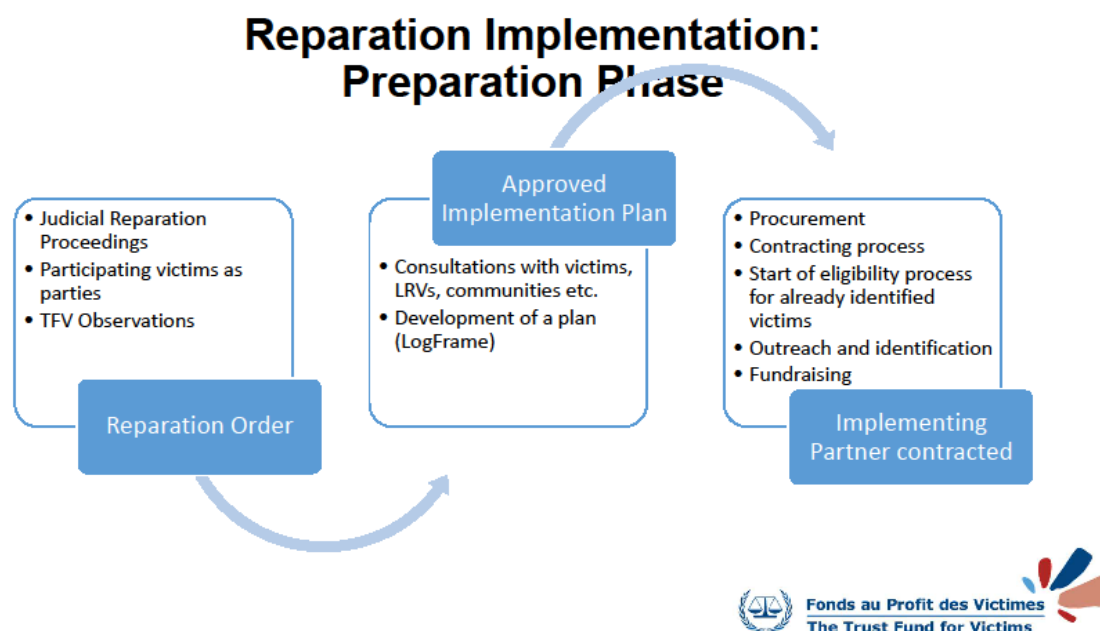
## Complementing Payments for Reparations



36. Accordingly, in devising the implementation plan, the Trust Fund is taking into account that resources enabling further complements will become available only incrementally and not at a guaranteed value, which may influence the scope and pace of implementation of approved reparations measures. The *Lubanga* reparation programme for the Former Child Soldiers started in 2021, having a five-year timeline. The *Ntaganda* measures benefitting the Victims of the Attacks are anticipated to start delivery in 2023, not taking into account the beneficiaries that will be reached until then through the IDIP. During the implementation of the combined *Lubanga/Ntaganda* measures, the Trust Fund will need to consider how newly available financial resources may be divided between reparations measures for Former Child Soldiers and the Victims of the Attacks, maintaining equity of access and continuity of services.

## B. Phases of reparation implementation

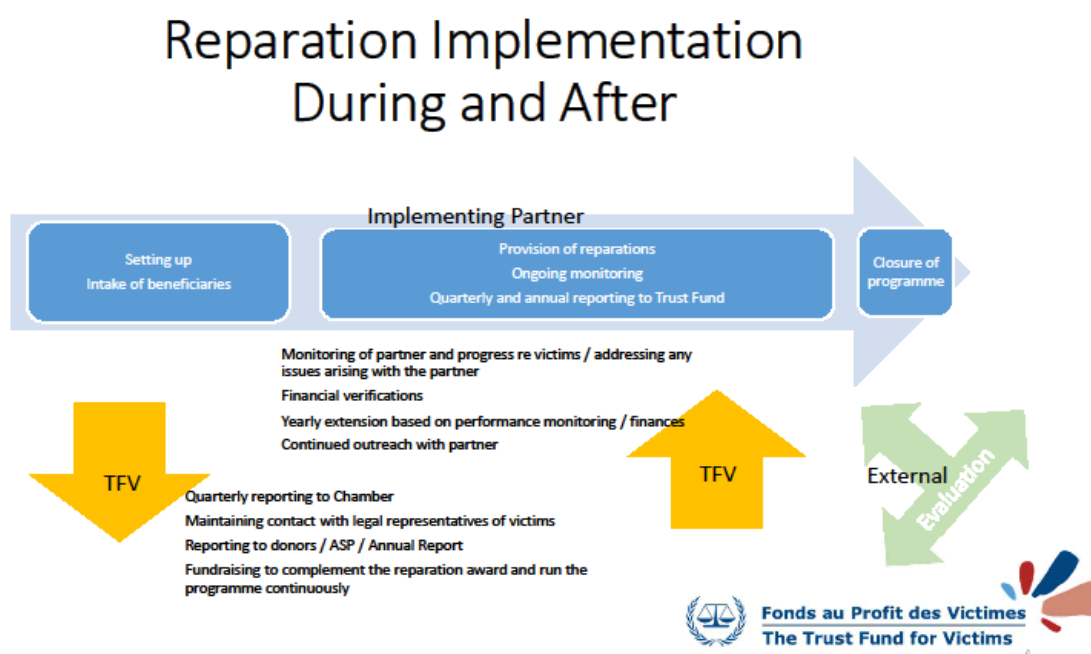
37. The reparation implementation phase starts with the issuance of the order for reparations. As a first step, the DIP needs to be developed that contains risk assessments and strategies to prioritise victims and phase activities, as required by e.g. limited availability of funds. The DIP is based on a consultation process with a variety of interlocutors, takes into account the submissions by the parties before the Trial Chamber and needs to be within the confines of the Reparations Order. Once the implementation plan is approved, the preparatory work can start. This preparation phase is necessary to select the implementing partner(s) in line with the relevant procurement processes and to contract such partners. In procuring such services, the Trust Fund adheres to the Financial Rules and Regulations. For the sake of full information of the Trial Chamber, the Trust Fund presents an overview of the procurement framework in Attachment 2. In addition, this period is used to prepare and start outreach and identification of new beneficiaries and to determine the eligibility of already identified beneficiaries. Crucially, this period is used to raise the funds necessary to run the reparation programme.



38. Once the implementing partner has been successfully contracted, the actual delivery starts. The implementing partner may need a start-up period of three to six months to select and hire specialists and experts and conclude agreements with sub-contractors. In this period, the

outreach activities of the Trust Fund need to increase with a view of reaching out to new beneficiaries and to fully start the eligibility process for newly identified beneficiaries.

39. Once the implementing partner is set up, the intake of the beneficiaries can start and the identification of new beneficiaries can continue at an increased speed. As of this moment, the measures as included in this DIP and the scope of work for the implementing partner can be gradually implemented for the benefit of the victims until the closure of the programme. The below provides a schematic overview of the process and the role of the implementing partner and the Trust Fund:



40. Upon contracting an implementing partner, the Trust Fund employs multiple measures to conduct programmatic oversight to evaluate performance and victim impact. The intent of Trust Fund programmatic oversight is to ensure that implementing partners are conducting the requisite rehabilitative services for beneficiaries as described in the proposal and to evaluate the impact and benefit conveyed to beneficiaries. In reparations proceedings, the Trust Fund oversees extremely closely the implementing partner, to the extent that it may, at times, follow the activities on a daily basis.

41. Several monitoring measures are utilised including contract compliance and financial accountability, transparency and outreach, quality service delivery, and impact and effectiveness on victims. The technical capacity and managerial capabilities of implementing partners are assessed throughout the implementation period of the project to ensure an efficacious and proper use of funds.

42. Oversight is ensured using various methods:

- a. The implementing partner submits quarterly service-related and financial reports to the TFV, an annual report at the end of the financial (calendar) year and a final report at the end of the project. With regards to risk management and mitigation, the implementing partner coordinates closely with the TFV staff to effectively manage any issues arising from implementation in a timely way and at no risk to project beneficiaries.
- b. Planned and spontaneous verification checks are carried out by the TFV field staff at least once a year to assess efficiency and effectiveness. During these verification checks, TFV field staff also engage with project beneficiaries and assess the satisfaction of victims who have received services from implementing partners.

43. For reparation programmes, the Trust Fund is exerting a much tighter level of oversight and works with the implementing partners on a daily basis. In particular, the Trust Fund ensures that all staff members involved in the programme are perfectly trained and understand the Rome Statute system, the roles of the legal representatives of victims, the functioning of the Court, the scope of the Reparations Order and of the programme and the legal constraints associated with running a programme of reparations arising out of judicial proceedings, such as for instance confidentiality requirements or record-keeping requirements. The latter must enable the TFV to get an insight into the specific services provided to the beneficiaries, insofar as required and appropriate.

44. The Trust Fund itself submits Update Reports to the Trial Chamber as provided for in regulation 57 of the Regulations of the Trust Fund. During implementation, any of the risks set out in the DIP may come to fruition, requiring an adaptation of the programme, a different phasing of activities or a further prioritization. Any such matters will be brought before the Chamber pursuant to regulations 57 and 58 of the Regulations of the Trust Fund.

45. Upon closure of the programme, the Trust Fund will receive the final narrative and financial report of the implementing partner and will, in turn, submit a final report to the Trial Chamber. In addition, the final evaluation of the programme will be carried out by an external

evaluator procured by the Trust Fund. The results of this evaluation will also be shared with the Trial Chamber.

46. Finally, in terms of programming, the TFV considers all those to whom it provides services as direct beneficiaries, while those who benefit indirectly from those services, e.g. because they are family members or other interlocutors of direct beneficiaries are indirect beneficiaries. This terminology needs to be distinguished from direct and indirect victims of the crimes as defined by the Trial Chamber and relevant to determine the eligibility of potential beneficiaries. In that sense, every victim (be it direct or indirect) found eligible to the programme becomes a direct beneficiary. The measures provided to direct beneficiaries, however, may not be the same for all direct beneficiaries.

### **C. TFV and Court's infrastructure and implementation capacities**

47. The Trust Fund relies on the Court's infrastructure, including country-based offices, to carry out its activities. The field based offices fall under the management of the Registry, which consults on a regular basis with the other organs of the Court, as well as the Trust Fund, about their current and prospective operational needs. The Registry's decisions on managing the presence and capacity of field based offices are further informed by the availability of budgetary resources, which are subject to review and decision by the Assembly of States Parties. Given the known trends in the Assembly's consideration of the Court's budgetary needs, it may be assumed that the Registry's flexibility in managing the Court's field presence will remain limited, in spite of the growing workload and expanding geographical spheres of action of both the Office of the Prosecutor and the Trust Fund.

48. In relation to the implementation of reparations (and assistance) activities of the Trust Fund in the DRC, and specifically in Ituri Province, the Trust Fund notes [REDACTED]. The mid-to long term outlook for the Office in Bunia is likely to come under budgetary pressure, which would affect the deployment of Trust Fund programme management staff. Considering the long-term programme implementation framework of the Trust Fund in Ituri Province, notably in relation to reparations in the *Lubanga* and *Ntaganda* cases, the Trust Fund will continue to advocate with the Registry to maintain adequate field presence in Bunia, enabling the Trust Fund's onsite guidance and monitoring of the implementation in direct contact with implementing partners, beneficiaries, and their communities, and consequently, its ability of immediate troubleshooting and well-informed reporting on progress.

49. The Trust Fund's delivery structure thus relies on the local presence of its programme staff, who receive guidance and support from The Hague, as necessary, by executive

management, and staff in legal, fund management, financial, and monitoring and evaluation roles. The current staffing structure in the Bunia Office consists of a P-4 Programme Manager, three P-2 Associate Programme Officers (a third one was mobilised on 1 March 2022) and one Field Assistant (in process of recruitment). They oversee the Trust Fund’s implementing partners, providing guidance and ensuring quality control in relation to implementation and results reporting. The Programme Manager also liaises with the DRC government, both central and provincial, and with the Kinshasa based international donor community.

50. To the extent possible, the Trust Fund further relies on Registry staff, both based in The Hague and in the Country Offices, in relation to victim identification and verification, logistical support (including transportation), security, and liaison with essential stakeholders, such as government agencies and UN organisations.

51. The availability of adequate human resource capacities, both at the Trust Fund and the Registry, depends on the Court’s programme budget, subject to review and control by the Assembly of States Parties. Again, budgetary trends limit the scope to expand such capacities, notwithstanding the foreseeable significant increase of workloads, in particular in relation to the implementation of reparation awards in the DRC.

52. It is noted that the United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo’s (“MONUSCO’s”) continued presence in eastern DRC, which is important for the Trust Fund’s ability to safely operate in a consistently volatile security situation, is also subject to the availability of the necessary financial resources, as well as on agreement between the DRC government and the United Nations.

#### **D. Monitoring and evaluation, and logical frameworks**

53. The Trust Fund’s monitoring and evaluation (“M&E”) system is designed to enable relevant and consistent reporting on the results achieved in the reparation and assistance activities that it is financing. It is guided by the Trust Fund’s Theory of Change, strategic objectives and guiding operational principles as set out in the TFV Strategic Plan. It is the backbone of the Trust Fund’s Performance Monitoring Plan (“PMP”), which codifies performance indicators as well as progress markers that track progress towards achieving the Trust Fund’s strategic goals.

54. The Trust Fund’s M&E system incorporates results reporting by implementing partners, which receive guidance and capacity building from TFV staff as and when necessary, in order to ensure compliance and consistent quality of reporting throughout the Trust Fund’s portfolio of programme investment. Different methodologies of data collection such as Sense

Markers, Most Significant Change are deployed to assess, measure, document, inform, and report on, qualitatively, the impact of the programme on the lives of victims. The M&E system thus allows the Trust Fund's organisational and operational learning. Effective and timely identification of programmes' successes or failures enables prompt adjustments of programme implementation.

55. The TFV uses progress markers to measure the performance of implementing partners in delivering reparation and assistance activities and to assess their compliance with the Trust Fund's financial and administrative framework, as well as any judicial instructions to the TFV in reparations cases.

56. The Trust Fund's M&E system is the foundation for the development of the logical frameworks underpinning the proposed reparations measures in the *Ntaganda* case, which are further informed by the Reparations Order, the submissions of the CLR's, the Trust Fund's review of expert reports, and consultations with victims and with both internal and external stakeholders. Adopting a harm-based and victim-centred approach, including the application of the do no harm principle, the proposed logical frameworks illustrate how proposed reparation measures will address the rights and needs of beneficiaries in the *Ntaganda* case, departing from the overall goal for beneficiaries to overcome their harm and achieve resilience in terms of mental, physical and socio-economic rehabilitation through access to quality and timely multi-sectoral services.

57. The logical framework approach enables the Trust Fund to illustrate the dynamic connection between programme inputs, activities, results (outputs and outcomes), and the overall goal of the reparation programme's impact. Logical frameworks also identify programme assumptions and risks in relation to the different levels of results. The TFV PMP's performance indicators guide the tracking and assessment of progress and inform on the success rate of activities, as well the appreciation of the implementation context. Periodic monitoring and reporting on the implementation of activities described in the logical framework inform the Trust Fund's programme management and its reporting to the Trial Chamber.

## IV. APPROACH AND PRINCIPLES GUIDING THE IMPLEMENTATION OF REPARATION

### A. Consultations

58. The Trust Fund conducted consultations that consisted in collecting and/or updating information in preparation of the DIP. The Reparations Order and subsequent decisions, as well as CLR submissions in relation to reparations and the expert's reports were analysed to ensure that all directions are taken into account and explored during the mission. In short, four streams of activities were conducted: (i) consultations with national authorities (ii) consultations with organisations currently active in Ituri and whose expertise was deemed relevant; (iii) consultations with reachable potential beneficiaries; (iv) preparation of outreach work. The consultations were held in Bunia with individuals locally present at the time, or through phone or video conferences.

59. The main achievements of the missions are as follows: (i) collection of updated information on the current security situation; (ii) collection of views and opinions on the strategies implemented by other organisations, including in relation to risk mitigation; (iii) collection of information for the design of the DIP and for outreach strategies in relation to the IDIP and DIP; (iv) confirmation of information available on the victims' wishes.

60. *Consultations with national authorities* – Following the issuance of the Reparations Order, the Trust Fund met in Kinshasa with the relevant authorities to ensure that they are informed of, understand, and support the activities of the Trust Fund in Ituri. In meetings with [REDACTED], the Trust Fund explained its reparations activities in relation to the *Katanga*, *Lubanga* and *Ntaganda* cases, as well as its assistance programme. The meetings resulted in expressions of support and cooperation, interest to visit the activities of the Trust Fund on-site, as well as in further guidance to engage with other Ministries, [REDACTED]. This answers the CLR2's queries in relation to how the Trust Fund engaged with the national authorities.<sup>25</sup> As to the kind of support and contribution that the Trust Fund expects from the DRC authorities, the Trust Fund recalls that it is essential to have the general support of the DRC authorities to be able to conduct the programme. The Trust Fund looks forward to the observations of the DRC authorities, if any, due on 7 April 2022 and to its further engagement with the authorities. At the provincial level, the Trust Fund has tightened its engagement with

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<sup>25</sup> CLR2 Request for Supplementary Information, ICC-01/04-02/06-2737-Conf, para. 28(x).

the new authorities over the past weeks as well, to ensure knowledge and general support of its activities in Ituri Province.

61. *Consultations with UN agencies at coordination level* – The Trust Fund met with the Country Directors of the [REDACTED], the [REDACTED] and the [REDACTED] to identify areas of collaboration and share strategies of engagement with government at the national and provincial levels in order to achieve the cooperation and facilitation by the government of our activities in the field.

62. *Consultations with the organizations active in Ituri* – On 18 and 19 June 2021, the Trust Fund organized a workshop with 11 selected organizations of the civil society, most of whom were consulted by the Trust Fund and also the experts prior to the issuance of the Reparations Order, including organizations implementing reparations in *Lubanga* (and now *Ntaganda IDIP*) and assistance programme activities, to discuss the reparations modalities. The workshop was led by [REDACTED], who was one of the four experts designated by the Trial Chamber. The participants discussed modalities proposed in the expert reports and the CLR's submissions insofar as they aligned with the Reparations Order. Following the workshop, they issued recommendations to the TFV. With a view to collecting contemporaneous operational information relevant for the implementation of reparations in the *Ntaganda* case, the same organisations were questioned on the basis of a form designed by the Trust Fund. Some organisations replied in writing and subsequently attended a workshop on 3 November 2021 during which their responses were discussed and majorly harmonized. The Trust Fund also met with numerous international organizations' representatives. Non-governmental organisations implementing humanitarian activities were met separately and in-person to discuss operational constraints in general and in the current security situation. Areas of collaboration were identified and will continue to be identified so that these organisations are kept informed of the Trust Fund's work and can become future partners if necessary. Of particular relevance was the fact that all organisations consulted indicated that they had to cease all operations in the Bambu/Kobu axis as a result of the current security situation. They also indicated that in the current circumstances the preferred way of action was to provide assistance to victims by way of cash transfer.

63. *Consultations with victims* – Victims' consultations in the current security context were less evident to organize. The Trust Fund noted the very precise views expressed by victims through the CLR's during the reparations proceedings and started its reflection from that point. It also consulted occasionally with the CLR's on various matters. The Trust Fund could not travel to victims' locations and the communities due to security restrictions. The relevant

authorities have themselves been fleeing their localities to slightly safer localities. With the support of the CLR2, the Trust Fund has met in June and November 2021 a total of 33 Victims of the Attacks displaced in Bunia due to the current security situation and usually residing in Kilo, Mongwalu, Bambu, Lipri, Kobu, Shudja, Niangaray. These victims were met in small groups for collective meetings. They had been requested not to share information about their own case file at these meetings. The Trust Fund provided them with more details in relation to the Reparations Order and endeavoured to hear from them additional aspects they would like the Trust Fund to consider when implementing reparations. As a general matter, victims consulted have expressed satisfaction in relation to the Reparations Order. They insisted on the necessity to take into account their current respective situations in the current security context and consider that for reparations to be effective, they must be reflected upon realistically and address their current situation in the current security context while being expeditious. They expressed that every single one of them is in need of immediate financial support be it of a modest nature in order to be in a position to receive reparations that will have a beneficial effect on them. Victims consulted welcomed the Reparations Order's proposal to consider building a community centre in the memory of Abbé Bwanalongwa, as well as the placement of a plaque in front of the Sayo health centre. They have also requested, if the available finances allow it, that the Trust Fund considers alternatively or cumulatively equipping the centre with a maternity department, refurbishing the health centre or providing to it material and medication. They have considered public excuses pronounced by Mr Ntaganda on national radio and television and in writing as an adequate means of satisfaction.

64. In developing the first and the second version of the DIP, the Trust Fund was informed by the consultations and interviews held over the past many years in the case of *Lubanga*, and its own as well as its implementing partner's interaction with the *Lubanga* beneficiaries and legal representatives in the case *Lubanga*, to which the CLR1 belongs.

65. *Consultations with local authorities* – The Trust Fund endeavoured to consult with relevant authorities of the localities where victims communities reside. Considering the security situation, the Trust Fund had to resort to an intermediary. The result was not detailed enough and the Trust Fund has tried to conduct additional consultations. It has managed to meet two representatives of municipalities, who happened to be in Bunia due to the security situation. In sum, their views were similar to those expressed by victims consulted.

66. *Consultations with implementing partners* – In the context of the implementation of the *Lubanga* case, and of the *Ntaganda* IDIP, the Trust Fund has been in constant contact with its partners which influenced the DIP in its first and second versions.

67. At the Court, the Trust Fund maintained contact with various sections (notably the Country Office, mission planning) and with the CLRAs. Specifically, with the CLRAs, the Trust Fund discussed adequate outreach measures. The report on consultations relevant to the eligibility mechanism is included in Part VII. It has been further updated following consultations held with the Registry after the submission of the first version of the DIP.

## **B. Compliance with Reparations Principles**

68. The Reparations Principles are an essential tool of guidance for the development of the DIP. The Trust Fund has endeavoured to give application to the do no harm principle. Concretely, this means that the Trust Fund's practices are such that they avoid re-traumatising victims in the process of being consulted or approached for potential intake into a reparations programme. By way of example, the Trust Fund has refrained from consulting unrepresented potential beneficiaries to not create undue expectations.

69. The Trust Fund has also been mindful of the Reparations Principles relevant to dignity, non-discrimination, and non-stigmatisation.<sup>26</sup> Designing inclusive reparations requires the measures to apply to all victims of the crimes committed by Mr Ntaganda and not exclusively to those who have already been identified or have participated in the proceedings.

70. In designing the reparation measures, the Trust Fund has also endeavoured to adopt a gender-sensitive and gender-inclusive approach and will prioritise this with the implementing partners.<sup>27</sup> In designing the reparative measures, the Trust Fund has ensured that women were consulted in a manner that permitted their free expression on their harm and reparative needs. This approach will continue during implementation. Specifically, in relation to the harm suffered by SGBV victims, the Trust Fund will ensure the services of a consultant specialised in gender-sensitive programming whose role will be to train all stakeholders involved in the implementation of reparations to the best practices in relation to gender-sensitive and gender-inclusive programming but also to provide support and conduct verification and monitoring of the proper implementation of these aspects.<sup>28</sup>

## **C. Others**

71. The Trust Fund's DIP, which will operate in the context of a humanitarian crisis requiring the Trust Fund to cooperate with many international actors, is also informed by the

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<sup>26</sup> Reparations Order, paras 41 *et seq.*

<sup>27</sup> Reparations Order, paras 60-62.

<sup>28</sup> CLR1 Request for Supplementary Information, ICC-01/04-02/06-2735-Conf-Exp, para. 22(i).

UN Sustainable Development Goals,<sup>29</sup> and more generally by the principles governing the behaviour of these actors in the region.

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<sup>29</sup> United Nations, Resolution adopted by the General Assembly on 25 September 2015, Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1), accessible at [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_70\\_1\\_E.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf)

## V. HARM RECOGNISED BY THE TRIAL CHAMBER AND DIRECTIONS FOR IMPLEMENTATION

72. The Trial Chamber determined that collective reparations with an individualised component were the most appropriate form of reparations. The Trust Fund notes that rule 98 of the Rules provides for individual awards or collective awards, not further distinguishing between different kinds of collective awards. The Trust Fund reads the Trial Chamber’s specification of an ‘individualised component’ as the Trial Chamber’s direction to ensure that the reparations are also addressed to the victims of the crimes of Mr Ntaganda individually and not only to communities, organisations or entities more generally. The Trust Fund does not read this direction as *only* requiring the implementation of individualised measures, i.e. excluding any kind of symbolic or community-related measures for the purpose of implementing the collective reparation award.

73. As to the eligible victims, the Trial Chamber determined that it would not identify the beneficiaries itself and provided the Trust Fund and the parties with eligibility criteria.<sup>30</sup> The Trial Chamber also provided ranges of estimates of numbers of victims.

74. The Trust Fund notes that the Trial Chamber ruled in detail in relation to each form of harm and the resulting damage, loss and injury it recognises as warranting reparations in the present case. The Trial Chamber held that “the approach of clearly defining the harms that result from the crimes for which Mr Ntaganda was convicted aims at protecting the rights of the convicted person and the rights of the victims of these crimes. It ensures that reparations are not awarded to remedy harms beyond the crimes for which Mr Ntaganda was convicted”.<sup>31</sup> The Trial Chamber adopted the ‘but/for’ standard of causation and the ‘proximate cause’ standard relevant to the link between the harm and the crimes.<sup>32</sup> It also established that a “coherent and credible account shall be accepted as sufficient evidence” for a victim of rape or sexual slavery to establish their eligibility as victims on a balance of probabilities.<sup>33</sup>

75. The Trial Chamber also established a number of essential factual presumptions. The Trust Fund has taken them into account, in light of the profound impact these presumptions have on the determination of the eligibility of an individual, in that they considerably simplify

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<sup>30</sup> Reparations Order, para. 105.

<sup>31</sup> Reparations Order, para. 130.

<sup>32</sup> Reparations Order, para. 132.

<sup>33</sup> Reparations Order, para. 139.

the establishment of certain types of harm. In the Reparations Order's part on "Chamber's determination", the Trial Chamber set out the harm recognised by all different categories of victims.<sup>34</sup>

76. In relation to the amount of the award, the Trial Chamber did not apportion specific amounts of the total amount of liability to each of the reparation measures and left it to the Trust Fund to make this determination.

77. The Trust Fund notes that many of the findings of the Trial Chamber are currently under appeal. Accordingly, it is possible that should the Appeals Chamber amend the Reparations Order, the Trust Fund may need to further adapt this DIP and produce a third version. Accordingly, the Trust Fund requests the Trial Chamber to be given the opportunity to amend the DIP should the Reparations Order be amended. Allowing such leeway would also address the Defence's concerns.<sup>35</sup>

### **A. Victims of the Attacks**

78. In relation to victims of murder and attempted murder, the Trial Chamber recognised: (i) Physical harm with long-term consequences (e.g. physical scarring causing embarrassment and impacting self-image); (ii) Psychological harm with long-term consequences (e.g. trauma, memory loss, neurological disturbances); (iii) that their standard of living was affected by the crime suffered; as well as (iv) that their development of opportunities was affected.<sup>36</sup>

79. In relation to victims of rape and sexual slavery, the Trial Chamber found that they suffered: physical, psychological, psychiatric, psychosocial, and economic harm (including injuries, trauma, ostracism, stigma, and social rejection), in the immediate and longer-term, in the case of the direct victims of rape and sexual slavery.

80. Children born out of rape were found to be direct victims and suffered physical, psychological, psychosocial, and economic harm (including rejection at multiple levels, discrimination, and marginalisation).

81. In relation to the victims of the crimes of intentionally directing attacks against a civilian population and persecution, the Trial Chamber found that they suffered: (i) Physical harm, including, for instance, as a result of beatings by the UPC/FPLC; (ii) Psychological harm and trauma, including painful memories, anxiety symptoms, sleeping disorders, behavioural disorders; (iii) Loss of productive capacity; and (iv) Reduced socio-economic opportunities.<sup>37</sup>

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<sup>34</sup> Reparations Order, paras 183 *et seq.*

<sup>35</sup> Defence Additional Matters, ICC-01/04-02/06-2740-Conf, para. 8(i).

<sup>36</sup> Reparations Order, para. 150.

<sup>37</sup> Reparations Order, para. 151.

82. In relation to victims of pillaging and destruction of the enemy's property, the Trial Chamber found that the following harms were suffered: (i) Destruction of houses and entire villages resulting in, not only the loss of structures but also the sense of home and livelihood, depriving civilians of 'shelter and a sense of security';<sup>38</sup> (ii) Physical injuries as a result of the crimes of destruction of property and pillaging; (iii) Loss of documents, e.g. identity cards, birth certificates, diplomas, property ownership titles; (iv) Livelihood stress due to lack of food and inability to generate income, as a result of the pillage of tools, livestock and destruction of crops; and (v) Psychological harm when loss of material assets had a significant effect on the victim's daily life.<sup>39</sup>

83. In relation to victims of forcible transfer and deportation, and ordering displacement of the civilian population, the Trial Chamber found that the following harms were suffered: (i) persistent physical harm as a result of the crimes suffered, including due to enduring harsh living conditions, without adequate shelter, water or food, and having to hide with no money or access to medical care;<sup>40</sup> (ii) moral harm as a result of exposure to continuous violence, danger and threats, and poor living conditions;<sup>41</sup> (iii) foregoing schooling and vocational training affecting future opportunities to engage in income generating activities as a result of displacement (high rates of illiteracy among children, especially girls);<sup>42</sup> and (iv) material and psycho-social harm due to the crimes' impacts on sense of belonging and identity, as well as means of life and safety for victims.<sup>43</sup>

84. In respect of indirect victims, the Trial Chamber recalled that indirect victims are those who suffered harm as a result of the harm suffered by the direct victims<sup>44</sup> and ruled that there can be four categories of indirect victims: (i) the family members of direct victims; (ii) anyone who attempted to prevent the commission of one or more of the crimes under consideration; (iii) individuals who suffered harm when helping or intervening on behalf of direct victims; and (iv) other persons who suffered personal harm as a result of these offences.<sup>45</sup>

85. Even though these four categories appear very broad, the Trial Chamber considerably limited the recognised harm of some of the indirect victims. It recognised as harm the material

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<sup>38</sup> Reparations Order, para. 160.

<sup>39</sup> Reparations Order, para. 153.

<sup>40</sup> Reparations Order, paras 154-155.

<sup>41</sup> Reparations Order, para. 155.

<sup>42</sup> Reparations Order, para. 156.

<sup>43</sup> Reparations Order, para. 157.

<sup>44</sup> Reparations Order, para. 35.

<sup>45</sup> Reparations Order, para. 36.

deprivation that accompanies the loss of a family member due to the lack of his or her contributions. The Trial Chamber ruled that the harm suffered by indirect victims of murder and attempted murder includes psychological harm, which is still ongoing to date,<sup>46</sup> as well as in some instances material harm due to disruption of the education of the direct victims' education.<sup>47</sup> Furthermore, indirect victims who attempted to intervene to prevent direct victims from being further harmed as a result of the relevant crime may also have suffered as a result of their intervention loss, injury or damage. Moreover, the Trial Chamber recognised the particularly broad character of the psychological harm suffered by indirect victims who witnessed the attacks or their consequences.<sup>48</sup>

86. The Trial Chamber recognised that children of the direct victims may have suffered transgenerational trauma regardless of their birth dates if they are able to show that their harm resulted from a crime for which Mr Ntaganda was convicted.<sup>49</sup>

87. In relation to the attack on the health centre in Sayo, the Trial Chamber noted the experts' opinion, according to which it caused the following kinds of harm: material harm to the physical structures, but also loss of adequate service provision and an exacerbated vulnerability of the population.<sup>50</sup>

88. In relation to the death of Abbé Bwanalunga, the Trial Chamber found that it caused psychological harm to those who witnessed the crimes, as well as to the people who knew him, the clergy, and the population in general.<sup>51</sup>

89. In relation to the proof of the harm, the Trust Fund recalls that the Trial Chamber indicated that the following presumptions shall apply:

- Material, physical, and psychological harm for (i) direct victims of rape and sexual slavery; and (ii) indirect victims who are close family members (members of a family living within the same household) of direct victims of the crimes of rape, and sexual slavery.<sup>52</sup>

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<sup>46</sup> Reparations Order, paras 177-178.

<sup>47</sup> Reparations Order, para. 180.

<sup>48</sup> Reparations Order, para. 178.

<sup>49</sup> Reparations Order, para. 182.

<sup>50</sup> Reparations Order, para. 159.

<sup>51</sup> Reparations Order, para. 179.

<sup>52</sup> Reparations Order, para. 145.

- Physical and psychological harm for (i) direct victims of attempted murder; and (ii) direct victims of the crimes committed during the attacks, who personally experienced the attacks.<sup>53</sup>
- Psychological harm for (i) victims who lost their home or material assets with a significant effect on their daily life; and (ii) indirect victims who are close family members of direct victims of murder.<sup>54</sup>

90. These assumptions are important for the eligibility determination and the number of beneficiaries that will ultimately benefit from the reparation programme.

91. As to the number of beneficiaries, the Trial Chamber held that it is impossible “in advance” to predict how many victims may ultimately come forward to benefit from collective reparations.<sup>55</sup> The Trust Fund concurs with this assessment of the Trial Chamber.

92. Consultations of the Trust Fund did not shed much more light on the potential number of beneficiaries. The Trust Fund has learned from consultations with leaders of the municipalities that around the time of the two attacks a very high number of persons lived in the affected areas. At the time the attacks took place, most of the inhabitants had though already left the relevant area and were therefore not directly affected by the attack. Given the very limited geographical and temporal scope of the conviction in particular for the crimes of forcible transfer and deportation, the Trust Fund considers that those victims who had already left cannot be considered eligible for these crimes. However, their property may have been subject to pillage or they may have been subject to persecution as a crime against humanity.

93. Taking these considerations into account, and keeping in mind the need for the Trust Fund to work with more concrete numbers in developing a plan, the Trust Fund works on the basis of an estimate for the purposes of this DIP only and applying a very conservative approach. It assumes that at the very least about 7,500 beneficiaries belong to the categories of victims who have suffered forms of material, psychological and possibly physical harm:

- a. direct victims of all crimes;
- b. close family members of victims of murder and rape or sexual slavery;
- c. indirect victims of all crimes insofar as they attempted to prevent the commission of one or more of the crimes under consideration or intervened on behalf of direct victims and who were “further harmed as a result of the relevant crime”<sup>56</sup>.

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<sup>53</sup> Reparations Order, para. 146.

<sup>54</sup> Reparations Order, para. 147.

<sup>55</sup> Reparations Order, para. 246.

<sup>56</sup> Reparations Order, para. 183 (d) (iii).

94. The Trust Fund considers that, on the basis of the above-mentioned number of victims, there are important numbers of indirect victims, likely going beyond 14,000, to which belong persons who suffered harm as a result of what they witnessed during and after the attacks and persons who suffered transgenerational harm, i.e. children born by direct victims after the commission of the crimes, all of which suffered, according to the Trial Chamber's ruling primarily psychological harm.<sup>57</sup>

95. The Trust Fund also considers that a percentage of beneficiaries lives outside of Ituri Province, i.e. in Uganda or other parts of the DRC. It expects the number has recently increased as a result of the currently ongoing conflict.

96. In relation to the parties' questions as to the basis for the Trust Fund's estimates in relation to the number of victims<sup>58</sup> and related enquiries<sup>59</sup> the Trust Fund provides the following clarifications. First, neither the parties, nor the Registry, nor the appointed experts were in a position to provide the Trial Chamber with sufficiently reliable estimates. In turn, in the Reparations Order, the Trial Chamber was equally in no position to provide an estimated number of victims. The factors having prevented all these actors to reach a sufficiently reliable conclusion as to the expected number of victims equally apply to the Trust Fund, which is equally in no position to provide an estimate. Unlike other actors involved in the reparations proceedings, the Trust Fund is, however, required to identify relevant services (with an anticipated allocated budget) to be provided to each group of victims and to do so within the amount of liability set by the Trial Chamber. To that effect, and to be able to adequately plan the implementation of reparations, the Trust Fund must use a reference point, so as to also sufficiently inform the parties and participants. The figures provided are therefore not estimates in the sense that it is expected that this is the objective number of individuals having suffered from the crime for which Mr Ntaganda was convicted. Instead, they are the numbers that the Trust Fund currently considers that it is capable of accommodating within the amount of liability set by the Trial Chamber and to provide services that are equal to the services that the Former Child Soldiers may receive through the *Lubanga* reparation programme. Changes to this assumption are addressed in the risks section below.

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<sup>57</sup> Reparations Order, paras 177-182 (with the exception of indirect victims of the crime of murder and attempted murder).

<sup>58</sup> Response of the Common Legal Representative of the Victims of the Attacks to the "Public Redacted version of the 'URGENT Request of the Common Legal Representative of the Former Child Soldiers for an extension of the time limit to respond to the Trust Fund for Victims' Draft Implementation Plan" (ICC-01/04-02/06-2735-Conf-Exp)", ICC-01/04-02/06-2737-Conf, para. 28(i); Defence Additional Matters, ICC-01/04-02/06-2740-Conf, para. 8(iii).

<sup>59</sup> Defence Additional Matters, ICC-01/04-02/06-2740-Conf, para. 8(v) and 8(vii).

## B. Former Child Soldiers

97. The Trial Chamber found Mr Ntaganda responsible for conscripting and enlisting children under the age of 15 years and using them to participate actively in hostilities or as bodyguards for soldiers and commanders, as well as using them to gather information about the opposing forces and personnel.<sup>60</sup> Mr Ntaganda was also convicted of rape and sexual slavery committed against female UPC/FPLC members under the age of 15 years.<sup>61</sup>

98. In light of an overlap of the scope of the *Ntaganda* case with the *Lubanga* case, the Trial Chamber recognised the responsibility *in solidum* of Mr Lubanga and Mr Ntaganda to repair each in full the harm suffered by the overlapping Former Child Soldiers in both cases. At the same time, the Trial Chamber found that “[t]he reparation programmes implemented in the *Lubanga* case, which comprehensively repair the harm caused to the overlapping direct and indirect victims of both cases, should be understood to repair the victims’ harm on behalf of both, Mr Lubanga and Mr Ntaganda”.<sup>62</sup>

99. By way of background, an overview of the overlapping scope is presented below.

100. On 14 March 2012, Mr Lubanga was convicted of the war crimes of enlisting and conscripting children under the age of 15 years and using them to participate actively in hostilities between *1 September 2002 and 13 August 2003* in Ituri.<sup>63</sup> In the present case, Mr Ntaganda was convicted of conscripting and enlisting children under 15 years of age between approximately *6 August 2002 and 31 December 2003*, and their use to participate actively in hostilities between approximately *6 August 2002 and 30 May 2003*,<sup>64</sup> i.e. for a longer period than Mr Lubanga. Consequently, the Trial Chamber held that all *Lubanga* victims “will be eligible for reparations in the *Ntaganda* case”.<sup>65</sup>

101. The Trust Fund, so far, has not yet seen the application of a victim who would only fall within the temporal scope of *Ntaganda*. It expects that an application falling in this category will form the exception, given that the conscription and enlistment did not continue on a large scale beyond September 2003. Furthermore, as the crime at issue is a continuous crime, Mr

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<sup>60</sup> Judgment, para. 178.

<sup>61</sup> Judgment, para. 93.

<sup>62</sup> Reparations Order, paras 220-221.

<sup>63</sup> *Prosecutor v Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, 14 March 2011, [ICC-01/04-01/06-2842](#) (‘Lubanga Judgment’).

<sup>64</sup> Reparations Order, para. 118.

<sup>65</sup> Reparations Order, para. 246; see also Trial Chamber II, *The Prosecutor v. Thomas Lubanga Dyilo*, Sixth Decision on the TFV’s administrative decisions on applications for reparations and other related matters, 23 August 2011, ICC-01/04-01/06-3523, para. 11.

Lubanga was held responsible also for the children recruited before September 2002 insofar as they continued to serve in the UPC/FPLC.<sup>66</sup>

102. The design of reparations for the direct<sup>67</sup> and indirect<sup>68</sup> Former Child Soldiers must address the harm they suffered. The harm suffered by Former Child Soldiers as described in the Reparations Order includes physical and psychological harm, the loss of family education, childhood, schooling, the loss of a life plan, material and economic harm, difficulties in controlling aggressive impulses and the non-development of ‘civilian life skills’, all of this leading to stigmatisation and rejection, the breakup of families and impacting close relatives.<sup>69</sup>

103. Close family members of direct victims may have suffered psychological, psychosocial and material harm from aggressive behaviour upon the former child soldiers’ reunion with their families and communities.<sup>70</sup> Their material, physical and psychological harm has been presumed by the Trial Chamber.<sup>71</sup> Additional indirect victims are those who were harmed when intervening to attempt to prevent the direct victims from being further harmed as a result of the relevant crime.

104. Additionally, Mr Ntaganda was convicted of rape and sexual slavery of child soldiers as war crimes, against children under the age of 15 years incorporated into the UPC/FPLC, between approximately 6 August 2002 and 31 December 2003.<sup>72</sup> As set out in the Reparations Order,<sup>73</sup> Former Child Soldiers having experienced sexual violence during the time spent in the UPC/FPLC (“Former Child Soldiers/SGBV”) have suffered physical harm and still suffer injuries – sometimes gynaecological injuries or infertility – and diseases, including sexually-transmitted diseases,<sup>74</sup> loss of life plan and loss of life chances,<sup>75</sup> but also suffer from social

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<sup>66</sup> Trial Chamber I, Judgement pursuant to Article 74 of the Statute, 14 March 2012, ICC-01/04-01/06-2842, paras 619, 759 and 1135.

<sup>67</sup> See Reparations Order, paras 120-123.

<sup>68</sup> See Reparations Order, paras 124-128.

<sup>69</sup> Reparations Order, paras 161-167.

<sup>70</sup> Reparations Order, para. 183 (d) (v).

<sup>71</sup> Reparations Order, para. 145.

<sup>72</sup> Reparations Order, para. 119.

<sup>73</sup> Reparations Order, para. 68 *et seq.*

<sup>74</sup> Joint Expert Report, [ICC-01/04-02/06-2623-Anx1, para. 92](#). Expert Report for Victims of Rape, Sexual Slavery and Attacks on Healthcare, [ICC-01/04-02/06-2623-Anx2, paras 28-31, 35-39](#). [Observations on the Appointed Experts’ Reports and further submissions on reparations on behalf of the Former Child Soldiers, 18 December 2020, ICC-01/04-02/06-2632, para. 90](#). [Submissions on Reparations on behalf of the Former Child Soldiers, 28 February 2020, ICC-01/04-02/06-2472, para. 42](#).

<sup>75</sup> Joint Expert Report, [ICC-01/04-02/06-2623-Anx1, para. 68](#). [Observations on the Appointed Experts’ Reports and further submissions on reparations on behalf of the Former Child Soldiers, 18 December 2020, ICC-01/04-02/06-2632, para. 47](#). [ICC-01/04-02/06-2632, para. 47](#).

stigmatisation from their communities,<sup>76</sup> as do their children born out rape or sexual slavery, who are sometimes rejected by their mothers,<sup>77</sup> and often suffer from post-traumatic stress disorder or other forms of psychological trauma.<sup>78</sup>

105. Particular attention is drawn to the fact that the children born out of rape were found by the Trial Chamber to be direct victims of the crimes for which Mr Ntaganda was convicted, as a separate measure of satisfaction.<sup>79</sup>

106. The Trial Chamber also recognized transgenerational harm as manifesting through emotional behaviour, attachment, and well-being of former child soldier victims' children, increasing the risk that they will suffer post-traumatic stress disorders, mood disorders, and anxiety issues with a potential impact on the structure and mental health of families across generations.<sup>80</sup>

107. The Trial Chamber presumed material, physical, and psychological harm for (i) former child soldiers; (ii) direct victims of rape and sexual slavery; and (iii) indirect victims who are close family members (members of a family living within the same household) of direct victims of the crimes of rape, and sexual slavery.<sup>81</sup>

108. As to the number of Former Child Soldiers, the Trust Fund notes that 284 Former Child Soldiers were admitted to participate in the trial.<sup>82</sup> To date, 1455 victims have been recognized to be beneficiaries of the case *Lubanga* and 1049<sup>83</sup> of additional beneficiaries applied by the cut-off date of 1 October 2021, as set by the Trial Chamber. Upon consolidation of the applications, their eligibility is determined by the Trust Fund. More than a thousand additional direct and indirect victims who have not come forward before the cut-off date, partly due to the security situation, are expected to request access to the *Ntaganda* reparation programme.

109. The Trust Fund considers that the above-mentioned numbers do not yet fully conclude the number of Former Child Soldiers in the case, but considers, as for the Victims of the Attacks, that victims continue to come forward. However, based on the above numbers and

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<sup>76</sup> Joint Expert Report, [ICC-01/04-02/06-2623-Anx1, paras 66-67-101. Observations on the Appointed Experts' Reports and further submissions on reparations on behalf of the Former Child Soldiers, 18 December 2020, ICC-01/04-02/06-2632, para. 50.](#) [ICC-01/04-02/06-2632, para. 50. Submissions on Reparations on behalf of the Former Child Soldiers, 28 February 2020, ICC-01/04-02/06-2472, para. 42.](#)

<sup>77</sup> Expert Report for Victims of Rape, Sexual Slavery and Attacks on Healthcare, [ICC-01/04-02/06-2623-Anx2, paras 32-34. Observations on the Appointed Experts' Reports and further submissions on reparations on behalf of the Former Child Soldiers, 18 December 2020, ICC-01/04-02/06-2632, para. 59.](#)

<sup>78</sup> Joint Expert Report, [ICC-01/04-02/06-2623-Anx1, paras 96 and 101;](#) Expert Report for Victims of Rape, Sexual Slavery and Attacks on Healthcare, [ICC-01/04-02/06-2623-Anx2, paras 41-52.](#)

<sup>79</sup> Reparations Order, para. 123.

<sup>80</sup> Reparations Order, para. 73.

<sup>81</sup> Reparations Order, para. 145.

<sup>82</sup> Reparations Order, para. 246.

<sup>83</sup> Subject to any duplication in submitted applications.

taking into account that the *Lubanga* programme is already active, the Trust Fund assumes for the purpose of the DIP that there will be about 3,000 victims who suffer material, psychological and often physical damage, loss or injury, in particular:

- a. direct victims, including children born out of rape or sexual slavery, as well as
- b. close family members of direct victims, and
- c. indirect victims who intervened in the commission of the crime.

110. In addition, the Trust Fund's assumption for the purpose of establishing this DIP is that there will be at least 6,000 indirect victims suffering transgenerational harm.

111. The Trust Fund also assumes that a part of these victims lives outside of Ituri Province, i.e. in Uganda or other parts of the DRC.

112. Finally, the Trust Fund refers to the finding of the Trial Chamber that the additional harm caused to victims of rape and sexual slavery within the UPC/FPLC and victims of recruitment beyond the temporal scope of the *Lubanga* conviction is to be repaired by Mr Ntaganda independently from Mr Lubanga, therefore requiring additional measures to those in the *Lubanga* reparation programme.<sup>84</sup> To that, the Trust Fund also adds the component of transgenerational harm that was not specifically recognised in the *Lubanga* case by the relevant Chambers.

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<sup>84</sup> Reparations Order, para. 222.

## **VI. DRAFT IMPLEMENTATION PLAN FOR REPARATIONS**

114. In developing the reparation programme, the Trust Fund has taken into account : (i) the boundaries set in the Reparations Order and subsequent decisions; (ii) the CLR's' submissions before the Trial Chamber; (iii) the expert reports submitted to the Trial Chamber; (iv) the outcomes and insights of consultations held in Ituri Province with victims, representatives of the civil society, the international community and journalists, as well as with the government of the DRC and international organisations in Kinshasa; and (v) the Trust Fund's experience of implementing reparative programmes throughout Ituri.

115. In developing this DIP, the Trust Fund has strived to address all the various objectives set by the Reparations Principles as well as the measures the Trial Chamber deemed necessary to provide to victims in order to ensure repair.

### **A. Modalities of reparations, overall goal and expected outcomes of the reparation programme**

116. To allow for a swift transition between the judicial phase of the process and its administrative phase, the Trust Fund hereby presents the proposed reparations measures in a programmatic framework that is cognisant of the Reparations Principles and other legal parameters set by the Reparations Order, of the requisite administrative procedure including in relation to victim identification and verification, of the operational context in the DRC and the related risks and assumptions, as well as of the financial parameters of the TFV's ability to complement the payment of the Reparations Order.

117. The programmatic framework sets the reasoned, proposed modalities of reparations, and the related specific measures, in relation to outcomes that describe how beneficiaries overcome the specified harms identified in the Reparations Order. The outcomes, in turn, will relate to the overall goal of the reparation programme.

118. The draft implementation plan ensures an equal approach to the access to reparations awards for victim beneficiaries in both categories, Former Child Soldiers and Victims of the Attacks, applying as much as possible the same objectives, outcomes and modalities. Differences in reparations modalities are the consequence of circumstances specific to the attacks, such as the attack on the Sayo Health Centre or the death of Abbé Bwanalonga.

## 1. Reparation Modalities

119. The Trial Chamber has provided the Trust Fund with guidance as to the different modalities of reparations to consider, including restitution, compensation, rehabilitation, satisfaction, with an emphasis on symbolic reparations as a way to contribute to the process of rehabilitation and their transformative value.<sup>85</sup>

### a) Restitution

120. The Trial Chamber considers that **restitution** “aims, to the extent possible, at restoring the victims to their circumstances before the crime was committed, even if full restitution will often be unachievable for victims of the crimes in this case”.<sup>86</sup> Restitution for Former Child Soldiers would mean to restore them to a point in time in their childhood and the relevant circumstances. Given the lapse of time, the Trust Fund considers that this is not achievable. Nothing can bring back the lost childhood for these victims. The same applies to Victims of the Attacks, including for those having suffered crimes to their properties, as the time elapsed and the nature of the crimes committed are such that it is not or no longer feasible to reinstate them in their prior situation.

### b) Compensation

121. The Trial Chamber defines **compensation** “as a form of economic relief [which] consists in the award of monetary funds for an economically assessable damage and may be appropriate to redress certain harms which cannot be addressed by other means”.<sup>87</sup> In this regard, the Trial Chamber requested the Trust Fund to submit a recommendation as to the appropriateness to compensate for any specific harm resulting from one of Mr Ntaganda’s crimes, including the amount of compensation, if any.<sup>88</sup> The Trust Fund considers that compensation should be regarded as a financial transaction, where restitution is not possible and in recognition of the individual harm suffered by victims, keeping in mind that such compensation should be proportional and adequate to the harm suffered and the gravity of the violation as well as the circumstances of each case. Any payment that is not proportional and adequate to individual harm should be qualified as a symbolic form of financial assistance, recognising individual harm in a general sense only. The Trust Fund notes the CLR1’s submissions that compensation is “particularly appropriate to address the harm suffered by

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<sup>85</sup> Reparations Order, paras 200-211.

<sup>86</sup> Reparations Order, para. 201.

<sup>87</sup> Reparations Order, para. 202.

<sup>88</sup> Reparations Order, para. 202.

victims of rape and sexual slavery in regard to their particular nature compared to the other crimes.<sup>89</sup>

122. The Trust Fund considers that any harm to the property of the victims or of economic impact would require an individual assessment of such harm, which would, given the number of victims, be very time-intensive and potentially defeat the purpose of a collective reparation award. Instead of such an individualised approach, the Trust Fund considers that any financial transactions paid as part of collective reparation awards needed to be awarded to certain groups of victims, e.g. those of murder, rape, persecution as crimes against humanity or war crimes.

123. The CLR2 has submitted before the Trial Chamber that he is not opposed to compensation, provided that they are of equal value for all victims and complemented with collective reparations<sup>90</sup> and that victims “understand that their sheer number may have the potential of rendering the process difficult [of awarding them individual reparations] and that there exist real challenges in relation to the payment of individual awards” and that they therefore “agree to being provided with collective reparations that have individualised features”.<sup>91</sup> Further, the CLR2 has submitted that, while not opposed to a monetary standard reparations package as proposed by the experts, it might be preferable to direct compensation to victims through centralised implementing agencies to be mandated with advising victims as appropriate<sup>92</sup> or to add the amount *per capita* to an award of collective reparations with individualised components.<sup>93</sup> In the appreciation of the Trust Fund, the opinion of the CLR2 appears to favour a symbolic form of financial assistance, and not specifically compensation for specific harm suffered.

124. The Trust Fund concurs with the CLR2 that the two different groups of victims, in this case, should be treated similarly and, insofar as possible, equally. Therefore, to provide a financial transaction for the harm suffered due to e.g. crimes committed against Former Child Soldiers, on the one hand, or due to certain crimes committed against Victims of the Attacks, such as murder or forced transfer on the other, would put more emphasis on the suffering of one group compared to the other. Given the ongoing conflict between largely the same groups that fought in 2002/2003, such an approach would not support attempts for reconciliation in

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<sup>89</sup> Observations on the Appointed Experts’ Reports and further submissions on reparations on behalf of the Former Child Soldiers, ICC-01/04-02/06-2632, para. 80

<sup>90</sup> LRV Attack Final Submissions, ICC-01/04-02/06-2633-Red, para. 53.

<sup>91</sup> Submissions by the Common Legal Representative of the Victims of the Attacks on Reparations, 28 February 2020, ICC-01/04-02/06-2477-Conf, para. 54.

<sup>92</sup> Final Observations on Reparations of the Common Legal Representative of the Victims of the Attacks, ICC-01/04-02/06-2633-Conf, para. 59.

<sup>93</sup> Final Observations on Reparations of the Common Legal Representative of the Victims of the Attacks, ICC-01/04-02/06-2633-Conf, para. 60.

the long run and may endanger the credibility of the reparation programme in the short run. Additionally, the Trust Fund concurs with the CLR2 that the time elapsed since the commission of the crime is such that the reparations should aim at rehabilitating the victims and providing them with sustainable life opportunities.

125. Accordingly, the Trust Fund does not propose compensation in reaction to specific harm suffered from any of the convicted crimes to either Former Child Soldiers or Victims of the Attacks as a form of collective reparations.

126. Taking into account the observations of the CLR1 to the Trial Chamber, the Trust Fund notes that both Former Child Soldiers and Victims of the Attacks have been victims of rape and sexual slavery. In addition, the Trust Fund is also mindful that sexual violence is considered prevalent in Ituri Province inside and outside the context of war crimes or crimes against humanity. Taking into account, *inter alia*, the Reparations Principles, the Sustainable Development Goal 5 for gender equality, the particularly negative societal impact of SGBV crimes in times of war and the need to work towards a stronger deterrent to committing these crimes, the Trust Fund considers that a symbolic form of financial assistance (‘symbolic compensation’) for direct victims of rape and sexual slavery and children born out of rape or sexual slavery is appropriate. This serves to recognise their harm and, in particular, the violation of their dignity and the stigmatisation that goes along with it.

127. The Trust Fund recalls that the symbolic form of financial assistance awarded to [REDACTED].<sup>94</sup> Given the Trust Fund addresses [REDACTED], and the only symbolic form of financial assistance proposed in this DIP is for SGBV victims, the Trust Fund proposes to apply [REDACTED] to this case and, in particular, to victims of rape or sexual slavery and children born out of rape or sexual slavery.

### c) Rehabilitation

128. Rehabilitation measures are aimed at addressing the medical and psycho-social conditions of the victims. Rehabilitation shall include the provision of medical services and healthcare, psychological, psychiatric and social assistance to support those suffering from grief and trauma; and any relevant legal and social services.<sup>95</sup>

129. Rehabilitation measures are further directed at facilitating the victims’ reintegration into society, taking into account the differences of the impact these crimes have on victims of different genders. Rehabilitation should aim at the restoration of a function or the acquisition

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<sup>94</sup> [REDACTED].

<sup>95</sup> *Lubanga* Appeal Judgment Principles, [ICC-01/04-01/06-3129-AnxA](#), para. 42.

of new skills required as a result of the changed circumstances of a victim due to the crimes. It should seek to enable the maximum possible self-sufficiency and function for the individual concerned and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social, and vocational ability; and full inclusion and participation in society.<sup>96</sup>

130. The Trust Fund considers that rehabilitation may include physical, psychological, and socio-economic rehabilitation measures. The multi-dimensional reparative value of rehabilitation measures for victim beneficiaries should enable them to rebuild their lives and regain their dignity. Such measures would address the following types of damage and injuries suffered by the victims as described by the Trial Chamber and summarised above: (i) psychological, psychiatric, and psycho-social trauma still suffered today; (ii) socio-economic impact and consequences as suffered today; (iii) physical damage and injury as suffered today. These measures may also address other types of negative impacts of the crimes, including at the community level and the fabric of the society.

131. The Trust Fund considers that rehabilitation comprehensively addressing victims' harm is the most appropriate modality for providing reparations to the victims of the crimes committed by Mr Ntaganda:

- a. It allows for a collective approach on the one hand and the consideration of the individual situation of each victim on the other.
- b. It is collective in that all victims found eligible will have access to all components of the rehabilitation programme. In addition, the main psychological services are provided in a group or family context. The socio-economic services will consist of components that are similarly available to all victims (training, support to start economic activities etc). Insofar as possible in the current circumstance of Ituri and taking into account the specificities of each of the two groups of victims in this case, socio-economic measures can also be embedded in the community where the beneficiaries live and thereby become beneficial to such a community.<sup>97</sup>
- c. This approach has individualised components as psychological and physical rehabilitation only apply to those victims who require it upon an assessment of their needs and if they agree to take part in such services. In addition, socio-economic

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<sup>96</sup> Reparations Order, para. 203.

<sup>97</sup> It should be noted that Former Child Soldiers prefer to stay anonymous, which needs to be respected. To ensure confidentiality, the name of the implementing partner of the Trust Fund in the case of *Lubanga* is still not publicly known and communities are not consulted in the implementation process.

measures, while similar for all victims with respect to the services available, are provided by taking into account the wishes and abilities of each beneficiary.

132. Accordingly, the Trust Fund considers that a rehabilitation programme best serves the purpose of providing in this case collective reparations with individual components to the victims in the present case.

133. It needs to be underlined that the Trial Chamber focused to a great extent, in its analysis pertaining to the category of indirect victims who suffered transgenerational trauma or those who witnessed the attacks, on the psychological harm they suffered.<sup>98</sup> Accordingly, for these beneficiaries, the focus of their rehabilitation will be on psychological measures, except if they prove specifically that they have also suffered other forms of harm due to the commission of the crimes.

#### **d) Satisfaction and symbolic measures**

134. The Trial Chamber held that **satisfaction measures** may contribute to “acknowledging the violations and safeguard the reputation of the victims” and “society’s awareness of the crimes committed by Mr Ntaganda, the need to foster improved attitudes towards crimes of this kind, and ensure that victims play an active role within their communities;”<sup>99</sup> **symbolic measures** “may also contribute to the process of rehabilitation”<sup>100</sup>. The Trust Fund considers that rehabilitation and other forms of reparations as described in paragraphs 203-208 of the Reparations Order, i.e. symbolic reparations, transformative reparations and reparations aimed at raising awareness, recognition, reconciliation and non-repetition, are forms of collective reparations that are indeed appropriate in the present case and under the circumstances, including in light of the limited availability of funds.

## **2. Overall Goal, impact and long-term outcome**

135. On the basis of the above considerations, the Trust Fund submits that the reparation programme will include rehabilitation measures, a symbolic financial amount for all victims of rape and sexual slavery and children born out of rape and sexual slavery and other symbolic and satisfaction measures with the overall goal that the Victims of the Attacks and the Former Child Soldiers (both categories including children born out of rape and sexual slavery) overcome the harm they suffered during and after the committed crimes.

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<sup>98</sup> Reparations Order, paras 177-182.

<sup>99</sup> Reparations Order, para. 207.

<sup>100</sup> Reparations Order, para. 208.

136. The overall goal of the reparation programme is that victim beneficiaries are enabled to overcome their harm and to achieve resilience in terms of mental, physical and socio-economic rehabilitation through access to quality and timely multi-sectoral services. This overall goal corresponds to the *impact* the Trust Fund generally aims to achieve in reparations activities, which is that the harm of beneficiaries is recognized and they receive reparative justice and are enabled to regain functioning autonomy.

137. To achieve the overall goal of the programme and the described impact, the Trust Fund pursues five more concrete outcomes of the programme:

- a. Outcome 1: Beneficiaries are resilient in their mental health and social functioning;
- b. Outcome 2: Beneficiaries are resilient in their physical health and mobility through physical rehabilitation & medical care and treatment;
- c. Outcome 3: Beneficiaries are resilient in their socio-economic status and outlook;
- d. Outcome 4: Beneficiaries are satisfied that the harm they suffered has been recognized and that their right to reparation is adequately addressed;
- e. Outcome 5: Families and communities of beneficiaries have an understanding of the severity of the crimes that occurred and accept the reparation programme as an adequate response to the consequent harms.

138. Each of these expected outcomes goes along with specific activities planned for the benefit of the beneficiaries, as well as with short term outcomes. They are set out in **Section C** below. They are also included in a logical framework as inserted at the end of this DIP, for both the Former Child Soldiers as well as the Victims of the Attacks. The activities will be carried out primarily by the implementing partners of the TFV, and partly directly by the TFV (e.g. through advocacy and outreach). **Section D** will address the other activities that the Trust Fund will need to conduct, such as procuring the services of implementing partners, carrying out outreach, conducting the eligibility process for beneficiaries to be included in the programme, monitoring and evaluating the activities of the implementing partners, and reporting to the Trial Chamber.

139. Finally, a work plan is inserted at the end of this document that sets out the milestones, steps and timeline.

140. To start with, the assumptions and risks relevant to the establishment of the programme are assessed and explained in **Section B** below.

## **B. Assumptions and risks**

### **1. Security situation and different groups of victims**

141. The Trust Fund recalls the situation of continuous violent conflict and intercommunal violence in Ituri Province. It might be considered that in such a situation, the provision of reparations should be suspended until the conflict subsides, which however cannot be expected to happen soon. Cognisant of the risks of conflict and (personal) insecurity to sustainable reparation outcomes, the Trust Fund nevertheless considers that providing reparations and strengthening the agency of the victims should be advantageous even in the situation of conflict and may provide the beneficiaries with the means to keep themselves and their families out of harm's way, and in particular from actively participating in the conflict. In addition, providing reparations at the current place of residence may support them and their families' chances of successfully enduring the current situation. Accordingly, the Trust Fund assumes that, despite the ongoing conflict, rehabilitation measures and other symbolic reparations can and should be provided, and will be valued by victims as adequate reparation for past harm. The Trust Fund considers that it works on a similar assumption for the ongoing *Lubanga* reparation programme, and for the *Katanga* reparation programme, which comes to an end in 2022.

142. The *Ntaganda* reparation programme addresses two different groups of victims, the Former Child Soldiers and the Victims of the Attacks. In a situation of stability and peace, it could be considered to put in place one programme for both groups of victims. In the current situation, and in line with the submissions of the CLR's and the instructions of the Trial Chamber,<sup>101</sup> the Trust Fund accepts that reparations measures are best provided in two separate programmes, ideally carried out by separate implementing partners. The risk inherent to this approach is that the Victims of the Attacks may question the credibility of the programme, because the Former Child Soldier programme (as proposed below) is already in place and, at present, has more financing in place, due to the earlier start of the related *Lubanga* programme. Accordingly, the Former Child Soldiers will receive reparations earlier than Victims of the Attacks, except for those who already receive reparative measures under the IDIP. The alternative approach of including all *Ntaganda* victims in the currently already existing *Lubanga* programme may lead to a faster provision of the first phase of reparations to all victims, but it would require a considerable change to the *Lubanga* programme.

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<sup>101</sup> *The Prosecutor v. Bosco Ntaganda*, Decision on the TFV's initial draft implementation plan with focus on priority victims, 23 July 2021, [ICC-01/04-02-06-2696](#) ("Decision of 23 July 2021"), para. 28.

143. Accordingly, the Trust Fund has planned for two separate programmes – one for the Former Child Soldiers and one for the Victims of the (Two) Attacks. To mitigate the above related risks, the Trust Fund will have to carry out strong outreach campaigns with clear messaging and explanations of the approach taken, strengthen the IDIP for Victims of the Attacks and carry out the procurement and contracting process of the implementing partner without delay.

144. In developing the overall goal and expected long-term outcomes, the Trust Fund has taken into account the currently prevailing situation in Ituri Province and in particular that large parts of the population have left their communities and are internally displaced or left the province. In ideal circumstances, the Trust Fund would get active support from communities to provide an enabling environment for the beneficiaries to benefit from reparations measures and overcome their harm, in particular for the Victims of the Attacks.<sup>102</sup> The current uncertain security situation does not easily allow communities to play this role and requires the community dimension of reparations measures to be contingent on more positive developments. This is an operational risk that can be mitigated by a flexible scope of work and contract amendment clauses that allow for adaptations as required by the circumstances in Ituri Province. Community involvement will also be important to develop and implement symbolic reparation measures, such as those for the Sayo health centre and the Abbé Bwanalonga. Again, an improved security situation will allow the continuation of community consultations to determine which are the most appropriate symbolic measures to implement.

145. The Trust Fund's management and oversight of the implementation of reparations measures in Ituri Province depends on whether its staff and implementing partners can continue to operate in Ituri Province. Should this no longer be the case, the (start of) any new reparation programme may need to be delayed and current activities suspended. Services contracts with the implementing partners will need to allow for such suspension of activities, in order to mitigate the financial risk to the resources of the Trust Fund.

146. Apart from the security situation, the availability of the Court's field based operational infrastructure in the DRC, and in particular in Ituri Province, is another factor subject to necessary assumptions and risks, as discussed above in paragraphs 50 to 52.

## **2. Perception of the population**

147. The Trust Fund wishes to draw the Trial Chamber's attention to the fact that civil society actors have cautioned the Trust Fund about the social consequences of the fact that the

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<sup>102</sup> See *ibid.*

charges for which Mr Ntaganda was convicted are circumscribed to specific events (in particular to two circumscribed attacks), which do not reflect the perceived larger extent of actions he allegedly committed. They consider that this is a potential source of tensions and that there is a risk that neighbouring communities, who also consider themselves to be victims of the UPC/FPLC and of Mr Ntaganda's actions, in particular, may find it hard to accept that they will not receive reparations. The Trust Fund considers that this risk is inherent in each reparation implementation following a conviction for specific crimes before the Court. The Trust Fund intends to mitigate this risk of communal non-acceptance of the *Ntaganda* reparation programme by ensuring through outreach that the population better understand and appreciate the reasons why not all could expect to benefit from reparations in this case. Ideally, and once the security situation allows, the Trust Fund may be able to embed the socio-economic reparations in the relevant communities and stipulate and ultimately reach positive effects for the communities as a whole.

### **3. Funding reparations, and the expected number of victim beneficiaries**

148. As in most reparations cases, and as illustrated above, the Trust Fund is currently not in the position to guarantee a full complement of the payment of reparations in the *Ntaganda* case, given in particular the unpredictable consequences of the COVID-19 pandemic and the Ukraine crises for the funding of a programme in Ituri Province. In addition, the final number of victim beneficiaries is as yet unknown. This requires the Trust Fund to make certain assumptions in planning the reparation implementation timeline: the unknown number of victim beneficiaries, in particular for the Victims of the Attacks, the anticipated pace of their intake into the programme, and the related annual programme funding needs throughout the implementation timeline. Each of these three parameters has its specific variance in scenarios. A programme-based estimate for the number of beneficiaries has been set out above in Part V, keeping in mind that the matter is currently under appeal with the relevant estimates brought forward by the parties. Should the number of beneficiaries change considerably (to be higher or lower), this should affect the possible scope and form of the rehabilitation services within the total value of the liability amount. The Trust Fund underlines that not knowing the finite number of beneficiaries from the onset will be the case in most reparations proceedings before the Court. In addition, considering the seat of the Court's judicial proceedings, accessibility to participate in Court proceedings is not as such evident for many. In Ituri Province, contacting victims, who participated in the proceedings, has proven to be difficult, when starting the *Lubanga* programme and the *Ntaganda* IDIP, and the Trust Fund considers that this will remain

an issue in the current security situation. Important for victims to come forward will be the personal experience and communication of programme beneficiaries and, in particular, outreach. Accordingly, it can be expected that, in cases such as those before the Court, once TFV activities start in the field, more victims will start to come forward. This conforms to the Trust Fund's experience in the cases of *Lubanga* and *Al Mahdi*. However, given the conflict situation in Ituri Province, it may also be that not all victims come forward or that it takes a long time for victims to take action to come forward.

149. The Trust Fund will need to monitor the situation closely and is committed to reporting any changes in assumptions and possible consequences to the programming to the Trial Chamber.

150. The cost assumption of rehabilitation measures are based on the experience of the *Lubanga* programme. In that respect, the assumptions are as real-time as currently possible but may be subject to change, depending on onsite operational circumstances and on the organisations that may ultimately be selected to provide the reparative measures to the Victims of the Attacks.

151. The availability of financial resources at the Trust Fund to enable the Board's complement decisions in relation to multi-annual reparation programmes is predictable only to a limited extent, as this depends on the Trust Fund's fluctuating annual revenue from voluntary contributions, including those that the Trust Fund may find to be earmarked for reparations or this specific case. Given the annual revenue trends at the Trust Fund, the *Ntaganda* funding goal scenarios underlying this DIP are already extremely ambitious. Lesser ambition in annual funding, however, would ultimately lead to longer programme duration and to proportionally higher indirect costs incurred by the implementing partner(s).

152. Despite the unknown number of future beneficiaries and on the basis of the connected existing *Lubanga* programme, the Trust Fund nevertheless considers it essential at this point in time to strive for the stated funding goals with a view to enabling the Victims of the Attacks to be rehabilitated in a similar way as Former Child Soldiers.

153. In sum, the reliability and predictability of programme funding may affect the scope, timing and duration of the implementation of reparations measures, and will require programme adaptability while maintaining equity of access by victim beneficiaries to reparations measures.

#### **4. Availability of services in Ituri Province and government cooperation**

154. The reparation programmes will focus its rehabilitation services in Ituri Province. As in the *Katanga* case, the delivery of collective reparative measures to victims residing elsewhere, including abroad, would be impractical and incur an unacceptable level of indirect costs, thereby creating a further risk in terms of funding. The Trust Fund does, however, intend to reach out to victims living outside of Ituri Province, who are estimated to be of a considerable number, and recognises that the conflict over the past 18 years was not necessarily conducive to displaced victims to return to Ituri Province. The Trust Fund intends to provide these beneficiaries with an adequate lump sum payment *in lieu* of services. The Trust Fund considers that this paragraph addresses to a significant degree the CLR's queries in relation to victims outside of Ituri.<sup>103</sup>

155. The sufficient availability, to the reparation programme, of public and specialised health services, experts and personnel in Ituri Province must also be the subject of assumptions. Certain health conditions, such as sexually transmitted diseases ("STDs"), including HIV/AIDS, require a continuum of health care beyond the duration of the reparation programme, which must therefore be assumed to remain available in the region.

156. For the reparation programme to be successful, the Trust Fund will rely on the cooperation and other action of the government at national and provincial levels. It falls within the responsibility of the government in the first place to establish the necessary structures that are a basis for victims to have access to reparations, such as streets, water, schools and health centres. The Trust Fund will seek to cooperate with the government, insofar as the security situation allows, in order to emphasize the need for the government to ensure the availability and functioning of these structures in the areas, where the beneficiaries live.<sup>104</sup>

### **C. Activities to achieve the outcomes:**

#### **1. Approach to Outcomes 1 to 3 – Rehabilitation measures**

157. Outcomes 1 to 3 relate all to rehabilitation as the overall modality and to activities that the Trust Fund refers to as 'collective service based reparations'. They are informed by the consultation process held, the CLR's submissions, as well as the Trust Fund's experience and insights of thirteen years of programmatic experience in Ituri Province. They will be

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<sup>103</sup> CLR1 Request for Supplementary Information, ICC-01/04-02/06-2735-Conf-Exp, para. 20(vi) and CLR2 Request for Supplementary Information, ICC-01/04-02/06-2737-Conf, para. 28(iii).

<sup>104</sup> In this respect, see also paras 27, 49 and 60.

implemented through an integrated approach to rehabilitate and redress the multifaceted nature of the harm suffered by victims.

158. Integrated victim rehabilitation programming is the rendering of the different relevant services to each eligible victim, in consideration of their individual wishes and needs. Victims may thus avail themselves of multiple rehabilitation services depending on their individual injury recovery requirements. For example, a victim may receive trauma counselling, participate in vocational training, and subsequently become a member of a village savings and loan association group in their home community. Or, a victim may receive psychosocial support, medical treatment, and financial support for the already existing business. Integrated service delivery attempts to address the multiple layers of harm that victims require to recover from as a result of their different injuries, whether psychological, physical, or socio-economic in nature. Central to the success of all forms of collective reparations is the sensitivity to the emotional and interpersonal functioning of each victim. This sensitivity is required throughout the process, including when conducting assessments of eligibility or harm, providing medical care, training courses, or facilitating an income generation project. Psychosocial awareness and education will help the families of beneficiaries and other stakeholders within the community to come to understand the behaviour of certain groups of victims, such as former child soldiers or children born out of rape.

159. Such a holistic, integrated programming approach recognises the need to interlink the arrangements available to the beneficiaries.

160. The programming must have the necessary flexibility to adapt to the changing realities in Ituri Province. While the current security situation only allows for a very limited involvement of the relevant communities, other associations may be involved as reachable in the areas where the beneficiaries currently reside. In addition, instead of first attending to psychological or physical needs, it may, exceptionally, be necessary to address directly the socio-economic needs, in particular if beneficiaries do not opt for training programmes in their current situation. They may choose to later address their physical and psychological rehabilitation needs.

161. The programming must also have the necessary flexibility to adapt to the risks set out above, in particular to the finances available and to the number of beneficiaries (given it is still unclear for, in particular, the Victims of the Attacks). In case of limited funds, possible scenarios may be that priority victims (as determined by the Trial Chamber) may first need to be served, and/or socio-economic measures may have to be phased. In sum, solutions to changing circumstances must be included in the programming from the start.

## **2. Activities in relation to Outcome 1: Beneficiaries are resilient in their mental health and social functioning**

162. The Trust Fund will ensure an expeditious intake of all beneficiaries. Part of the intake is an assessment of the psychological needs of the beneficiaries and their families (insofar as they are not direct beneficiaries<sup>105</sup> themselves).

### **a. Psychological assistance**

163. Psychological assistance will be specifically tailored to the needs of the beneficiaries. In this regard, at the intake, the particularity of the status of each beneficiary will be taken into account by psychologists to ensure that the full extent of the need of each beneficiary is captured. Such psychologists must be specially trained to handle the variety of harm and must show experience in handling transgenerational trauma, SBGV crimes related trauma, former child soldiers and other related trauma direct and indirect victims may suffer from.

164. The interventions are best organised so that they will take place slightly before the interventions in the other areas (i.e. physical health and socio-economic situation) to enable the beneficiaries to derive the maximum benefit from the services provided in the areas of socio-economic and physical rehabilitation as part of a holistic approach. The psychological assistance may also be provided throughout the period in which the rehabilitative interventions are being carried out, in a manner that ensures the beneficiaries will receive specific support, as needed, which also includes mentoring, in the context of services to establish income generating activities and moral support as part of the physical rehabilitation service. They should also be designed in a manner that links them to other activities forming part of the psychological rehabilitation modality.

165. The psychological strategies will be planned according to needs, and take into account the wishes and choices of the beneficiary victims in an individual/family and/or group manner. They will primarily address the sufferings of the victims caused by the crimes that they have suffered and must equip them with the tools to reconstruct and adapt themselves better to their current life situation.

166. Some of the beneficiaries may require, and agree to, intensive group therapy or individual psychotherapy. It is expected that this applies foremost to SGBV victims, children born out of rape, family members of murder victims and Child Soldiers more generally. The majority of the beneficiaries will require less intensive psychological care, carried out through a number of group or family sessions.

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<sup>105</sup> Concerning the use of the term of *direct beneficiaries*, see *supra* para. 46.

167. In the Trust Fund's experience, certain victims prefer therapy through discussion groups. Therefore, discussion groups, for those victims who wish to participate, will be organized to enable the victims to communicate among themselves, and console and comfort each other through sharing their experiences.

168. In addition, the Trust Fund's partner(s) will facilitate the creation of support network groups for the beneficiaries to exchange trauma and recovery experiences. This will also include groups for SGBV victims and children born out of rape, as well as e.g. for Child Soldiers. Participation is entirely voluntary. This is expected to increase the mutual support networks, help develop coping mechanisms, foster healing, recovery and social functioning. It will also improve the awareness of the relevant communities about the crimes and ultimately strengthen the social fabric of the beneficiaries.

169. The Trust Fund will expect from its implementing partner(s) that they conclude memoranda of agreement with the psychological support organisations located close to the places where the victims reside, which must also provide expertise in the task they have been entrusted to carry out. They are expected to be capable, either directly or with the assistance of their network, of providing the necessary support for each victim while ensuring to obtain preferential rates from the entities with which they are collaborating.

**b. Psychosomatic treatments**

170. The psychosomatic treatments should be organised along the same lines as the psychological therapies being provided for the benefit of the victims concerned. Moreover, the partner must ensure that effective treatments and medicines are provided to remedy the psychological difficulties that the victims concerned are faced with. The partner must be able to pay special attention to monitoring the progress resulting from the treatments and suggest preventive and corrective measures to alleviate any possible adverse outcome.

**3. Activities in relation to Outcome 2: Beneficiaries are resilient in their physical health and mobility through physical rehabilitation & medical care and treatment**

171. The physical sufferings endured by the beneficiaries are diverse in nature, as also set out above in the section relevant to the 'harm'. The partner will need to confirm, evaluate and prioritise the physical sufferings of the beneficiaries.

172. The partner must be able to conclude memoranda of agreement with the clinics, laboratories, hospitals or other medical centres located close to the places where the beneficiaries reside in Ituri Province, which must also provide expertise in the tasks they have been entrusted to carry out. The partner(s), either directly or with the support of a network,

must be capable of administering the necessary treatments to each victim (namely, for example, medicines, physiotherapy services, equipment to facilitate mobility such as crutches or wheelchairs, STI/STD tests, ARV and related treatments). They must ensure to obtain preferential rates from the organisations with which it is collaborating.

173. The options for care and intervention must be discussed individually with the beneficiaries concerned so that their concerns and wishes can be taken into account. In addition, the beneficiaries always need to agree to pursue a specific treatment. Receiving treatment is entirely voluntary, which is particularly important in the context of addiction disorders. Moreover, the locations and dates of treatments must be established in agreement with the beneficiaries. The medical treatments and care will require them to set aside considerable amounts of time, even though they may have a family and financial responsibilities. The partner must ensure that the victims can benefit from physical rehabilitation in a way that is least prejudicial to commitments of the above nature. They must also ensure that assistance is provided with transport and admission of the victims to the hospitals, clinics or medical centres for the required treatment, and ensure that this is financed.

174. The desired outcome of the physical rehabilitation programme is a guarantee of access to medical services for the beneficiaries, including referral to other bodies where necessary, the provision of surgical services, remedial treatments and monitoring, improved physical well-being and increased mobility of the victims. The partner must be able to pay special attention to monitoring the progress resulting from the treatments and suggest preventive and corrective measures to alleviate any possible adverse outcome.

175. The injuries or illnesses of the beneficiaries may require custom-designed medical care responses, such as prosthesis, orthoses, crutches, corrective surgery, ophthalmology, gynaecological pathologies, STDs including HIV/AIDS, loss of female fertility, etc.

176. The implementing partner will need to ensure, in close consultation with the Trust Fund, that the treated illnesses and injuries stem from the harm suffered due to the commission of the crimes. This is in particular important for those indirect victims, in relation to whom the Trial Chamber did not assume physical harm (those who witnessed the attacks and children born after the commission of the crimes), but also more generally for all other victims, in particular, if specific costly treatments are required to treat a specific condition. To provide an example: while a Child Soldiers' addiction to alcohol will be treated, insofar as possible, as a matter of course (and independently from the point in time such an addiction started), a prosthesis cannot be provided by this programme, if the relevant beneficiary lost a limb in a recent accident or conflict situation.

177. In this context, the Trust Fund also stresses that some of the crimes committed had components of continuity. For example, the crime of enlisting or conscripting children under fifteen years is a continuous offence, stretching over a period, during which these beneficiaries may have been subject to many different kinds of abuses, including any form of SGBV related abuses, torture and duress related forms of abuse and suffer from the consequences. Accordingly, the treatment of any of such injuries and illnesses resulting from any such abuses, including any form of SGBV related abuses, is included in the physical rehabilitation services provided. This includes addictions, SGBV-related illnesses, including in particular STDs.

178. Finally, in order to ensure that the physical injury or illness treated is indeed linked to the harm suffered due to the commission of the crime, the Trust Fund will ensure that this aspect is considered during the eligibility process. In addition, the Trust Fund's programming will provide for a layer of monitoring to ensure that illnesses and injuries stemming from the commission of the crimes are treated. This may be achieved by hiring an expert (medical doctor) for that purpose in order to make spot checks in that regard.

#### **4. Activities in relation to Outcome 3: Beneficiaries are resilient in their socio-economic status and outlook**

179. This programming component starts with an assessment aimed at determining the socio-economic priorities of the beneficiaries and developing the corresponding response plan.

180. The beneficiaries residing in Ituri Province must be able to access all of the interventions associated with this component. The *in lieu* lump sum is meant as a substitute for all those interventions for beneficiaries residing outside of Ituri.

181. In a similar way as for the physical rehabilitation, the Trust Fund stresses that the Trial Chamber did not create an assumption according to which all indirect victims have inherently suffered from economic harm.<sup>106</sup> Accordingly, those indirect victims who witnessed the attacks and children born after the commission of the crimes who are suffering from transgenerational trauma) will have to show, as part of the eligibility process, a link between their economically disadvantaged current position and the harm they suffered as indirect victims.

##### **a. Socio-economic support starter sum**

182. Consultations with organisations active in Ituri Province and victims have shown that it is advantageous to the acceptance of the programme and good practice to provide beneficiaries early in the programme with cash, a sort of starter sum in order to take into account the current situation in Ituri Province. When exactly (e.g. at the intake or at the start of

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<sup>106</sup> Reparations Order, paras 177-182.

the socio-economic component), which amount and how best to provide such a sum will be a matter for each programme to determine.

183. In developing this need, the Trust Fund takes into account lessons learned from the *Lubanga* implementation, where beneficiaries have asked for an amount of cash lump sum before the start of any psychological, physical rehabilitation measures or the socio-economic component. In addition, the Victims of the Attacks consulted did express a need to receive an amount of money early in order to accommodate the more urgent needs they have.

184. Accordingly, the Trust Fund proceeded to study the feasibility of such a measure, by consulting with local, national and international organisations involved with such activities in Ituri. The outcome of these consultations illustrate that, at the present moment, taking into account the ongoing conflict, money transfers do appear to be one of the favoured types of interventions, in particular by mobile money.

185. Accordingly, awarding them a modest cash transfer at the very start of the programme or the socio-economic programme component is appropriate, in that it permits that basic needs are covered and the victims are in the right mental space to benefit from rehabilitation awards. This course of action permits additionally that victims are repaired (at least partly) in a more speedy manner and gives them an increased level of agency as to the transformative nature of the reparations. Further, issuing such a lump-sum to all beneficiaries permits the level of trust in the actions of the Court, the Trust Fund and implementing partner considerably increases in that victims finally see a tangible result of their involvement with the Court. This increased level of trust is a good basis to ensure the acceptance of other reparation measures.

186. The Trust Fund considers that this should also be available to Former Child Soldiers, despite the recommendation of principle 7.35 of the Paris Principles. As the crimes were committed more than 18 years ago, these former children are now adults and are therefore considered able to handle cash.

187. The Trust Fund also fully concurs with the CLR1 in that issuing money is more appropriate in a context in which beneficiaries receive some form of support and guidance as to the way it is best used.<sup>107</sup> Accordingly, the Trust Fund plans that financial assistance is being made available by cash-hand out when possible, or by mobile money when feasible and preferred. The implementing partners will have advisers who can provide guidance to the beneficiaries if so wished on how best to use the money for the intended benefits.

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<sup>107</sup> Submissions on Reparations on behalf of the Former Child Soldiers, 28 February 2020, [ICC-01/04-02/06-2474](#), paras 80-81, citing the Joint submission by the United Nations containing observations on Reparations pursuant to Rule 103 of the Rules of Procedure and Evidence, [ICC-01/05-01/08-3449](#), 17 October 2016, para. 49.

**b. Educational activities**

(1) Refresher training, university scholarships or language courses

188. With respect to the educational activities, the programme ensures the payment of the tuition fees for beneficiaries. With respect to refresher trainings, implementation of this component should begin with a process for determining the level of studies for beneficiaries resuming or commencing studies, and suitable measures to enable them to regain their standard. In this respect, beneficiaries who have not attained university level will be enabled to access quality remedial classes if placement-level tests have shown they are necessary, or if the beneficiaries express a wish for them. These refresher courses should enable victims wishing to undergo professional training to attain the level required in order to do so.

189. With respect to beneficiaries taking university courses, university scholarships will be provided to beneficiaries upon presentation of supporting documents demonstrating that the studies are being engaged ineffectively. These university scholarships should enable them to cover the university fees they are required to pay. The place of study will be determined in coordination between the partner and the beneficiary; the point of orientation for the scholarships is, in the first place Ituri Province, but exceptionally also the DRC.

190. English and/or French language tuition courses will be made accessible to those beneficiaries who want this but do not wish for one of the two above-mentioned interventions.

191. Throughout the period of studies pursued by the beneficiaries in Ituri Province, they will be provided with an allowance (based on Ituri Province costs of living) to help them pay their day-to-day living costs.

(2) School fees

192. A budget to cover school fees of dependants of beneficiaries<sup>108</sup> is provided, insofar as those dependants are not themselves beneficiaries who can make use of the socio-economic component. Each of the beneficiaries whose dependants can benefit from this modality will have the possibility to use a fixed budget at their will for the dependants he or she chooses. This budget will need to be determined within the context of each programme, as being equivalent to the value of secondary school fees for a fixed number of children (enrolment + light meal + construction charges + examination fees) at a public school in Ituri (i.e. the first secondary school year to the sixth secondary school year). A budget for a fixed number of complete school kits to be used for purchasing school kits for the same period will also be made

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<sup>108</sup> Concerning the use of these terms, see *supra* para. 46.

available to each victim. This budget will be available (e.g. in form of reimbursement) from the date of the intake.

**c. Income generating activities**

(1) Vocational training

193. As part of the income generating activities, beneficiaries may access vocational training courses with a view to conducting an income generating business activity. To this end, the victims will be supported in their choice by an advisor, who will help them to assess the viability of their project and provide them with appropriate advice on its successful development. Such training can cover fishing, hairdressing, driving cars, trucks or motorcycles, masonry, work as a mechanic, dressmaking, bookkeeping, setting-up a business and other types of training that will be subject to a case-based evaluation in consultation with the Trust Fund, as well as available local resources. Beneficiaries will receive a kit containing the supplies necessary for their training, financial assistance during the training, and a starter kit for their income generating activity project for which they received training. This kit will be composed of basic materials that are essential for performing the desired business activity. Where appropriate, the beneficiary will get assistance in obtaining vocational work experience.

(2) Material assistance in conducting an income generating activity

194. Beneficiaries will receive material and logistics support in terms of both the purchase and shipment of merchandise as well as payment of the costs of hiring stands, showcases or premises. The activities include agriculture, fishing, hairdressing, driving cars, trucks or motorcycles, masonry, work as a mechanic, dressmaking, setting-up a business and other types of activity that will be subject to a case-based evaluation in consultation with the Trust Fund, as well as the available local resources. Beneficiaries will receive support in organising income generating activities for the benefit of groups of victims wishing to form a cooperative or any other similar structure that can be created in Ituri Province.

(3) Savings and credit association

195. A further possibility is the support in creating a savings and credit association to support the economic initiatives of beneficiaries by means of microfinance to consolidate and improve their chances of success in the projects they undertake.

196. In the current *Lubanga* programme, this option has not yet been chosen by the beneficiaries, to date, and it may not conform to the current circumstances of the beneficiaries.

Nevertheless, the Trust Fund still considers this to be a viable option, in the long run, taking into account the intended duration of the programme.

**d. Support with social rehabilitation**

197. Beneficiaries may receive support that is aimed at helping them to integrate better socially, as well as with their friends and relations. Such support is provided by social counsellors.

**e. Lump sum *in lieu***

198. The Trust Fund considers that in the specific circumstances prevailing in Ituri Province, in particular the high number of displaced persons, many beneficiaries cannot, due to their location outside of Ituri Province, participate in any of the above socio-economic activities. Instead, they may choose to receive a lump sum *in lieu*, which will be the same for all such beneficiaries in a programme.

199. Even though the sum will be considerably higher than the starter sum discussed above, the same kind of reasoning applies for providing cash to victims (be it through mobile transfer). In addition, given the higher sum, the implementing partner will ensure that beneficiaries are provided with advice on how to use this sum to improve their socio-economic situation.

200. Depending on the wishes of the beneficiaries, the disbursement of this lump sum can be staggered and in phases. In addition, given the possible financial constraints of the Trust Fund, the programming must provide sufficient flexibility to allow the implementing partner to stagger the disbursement of such a lump sum *in lieu*.

201. In the same way as for the amount of the starter sum, the amount of the lump sum *in lieu* will be determined in close consultation with the implementing partner(s) and then be communicated to the Trial Chamber and CLR. In any case, any such amounts will need to be kept confidential in order to minimise the risks for the beneficiaries as well as for the implementing partner.

202. The Trust Fund notes the parties' queries in relation to the allocation of a lump sum to victims, the associated circumstances and conditions of its allocation, its amount, the budgetary implications of this measures as well as the risks associated with providing victims with such payment.<sup>109</sup> In this regard, the Trust Fund refers to the above and adds that the *in lieu* sum is primarily attributed in *lieu* of reparations for socio-economic harm to victims who reside

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<sup>109</sup> Defence Additional Matters, ICC-01/04-02/06-2740-Conf, paras 8(iv), 8(viii) and 8(ix); CLR1 Request for Supplementary Information, ICC-01/04-02/06-2735-Conf-Exp, para. 22(iv) and CLR2 Request for Supplementary Information, ICC-01/04-02/06-2737-Conf, para. 28(xi).

outside of Ituri at the time of implementation of the reparations. Only exceptionally and should the security situation further disintegrate in Ituri Province, it may be considered to also include victims who find themselves in Ituri but displaced from their homes as a result of circumstances beyond their control (such as the armed conflict), which prevent them to take part in training and usefully start an income generating activity. In case of such changed circumstances, the Trust Fund will inform the Chamber accordingly, keeping in mind that such an approach will require changes to the programming of the relevant implementing partner(s).

203. As to the overall budgetary implications of this measure and the expected amount of the *in lieu* sum, the Trust Fund underlines the need to keep any sums outside the public sphere and recalls the many risks related to implementing these reparations and therefore the need for the Trust Fund to be able to react flexibly to any such risks materialising. In any case, the amount will be oriented on the socio-economic support received by beneficiaries in each programme and not form a full financial compensation for the socio-economic component. Concrete amounts will be subject to the available budget within each programme.

#### **5. Implementation of activities for Outcomes 1 to 3**

204. The above-described rehabilitation activities will be carried out by the Trust Fund's implementing partners and be divided into two multi-annual programmes: one programme for the Former Child Soldiers and one programme for the Victims of the Attacks. The programmes will be called accordingly: Former Child Soldiers Programme ("FCSP") and Victims of the Two Attacks Programme ("V2AP"). The latter name is chosen for the programme as a means of outreach, serving as a basis to explain that not all attacks that took place at the time were subject to Mr Ntaganda's conviction.

205. The programmes will be rolled out in the 5 territories of Ituri Province. Eligible victims currently residing elsewhere in the DRC, in Uganda or elsewhere in the world will not be in a position to benefit from those services and will instead be served with a lump sum in lieu of rehabilitation.

#### **f. Former Child Soldiers Programme (FCSP)**

(1) The *Lubanga* collective service-based programme

206. As set out above, the Trial Chamber already indicated that the *Lubanga* programme can be used for the purposes of the Former Child Soldiers. The Trust Fund concluded on 15 March 2021 the contracting process for a five-year reparation programme with one implementing partner [REDACTED]. This partner is sub-contracting other organisations active in the region to provide collective service-based reparations to the victims of the *Lubanga* case who belong

to the same group of Former Child Soldiers as that in the *Ntaganda* case. This reparation programme aims at ensuring that the various kinds of harm suffered by Former Child Soldiers in the Lubanga case are addressed at an individual level, in particular by providing, according to the needs of the Child Soldiers, physical and psychological rehabilitation and, according to the individual situation of the Child Soldiers, various forms of socio-economic measures, such as vocational training, assistance with income generating activities, as required, and the payment of school fees and pensions. The programme is active in the five territories within the Ituri Province: Mambasa, Irumu, Djugu, Mahagi and Aru.

207. For the sake of clarity, the Trust Fund describes below the beneficiaries' intake process in the *Lubanga* case. Firstly, once a beneficiary is referred to [REDACTED], the intake starts with an initial in-depth individualised needs assessment as the beneficiaries' needs and wishes are paramount to the victims' satisfaction with the measures they receive. The assessment will reveal the extent of the needs of the beneficiary in terms of rehabilitation. Following the assessment, the beneficiary may start immediately with receiving tailored psychological or physical treatment depending on the intensity of their need in terms of these two components. During such medical and psychological treatment, beneficiaries may receive financial support to meet immediate needs as a way to compensate transportation costs and the caused loss of earnings. Activities are organized as closely as feasible to victims location. More complicated treatment may require transfers to facilities within or outside Ituri. In cases requiring a more constraining treatment, transfers to adequate facilities are arranged with adequate financial support, as required. In parallel, education support for beneficiaries and their dependents is provided. As soon as the beneficiary is considered physically and mentally sufficiently fit to conduct socioeconomic activities, they integrate the related component. This component starts with a lump sum that allows the beneficiaries the necessary financial support to attend a vocational training and alphabetisation course if needed and wanted. A kit for the training is available to the victim. Once the training ends and beneficiaries are ready to set a business plan and receive advice, they are accompanied for the start of their income generating activities and receive a kit and a cash subvention for the first year of implementation. The cash subvention is the same for all beneficiaries. The direct accompaniment of the implementing partner continues for a minimum of three months. The advice and support of the implementing partner remains accessible to the beneficiaries thereafter for the duration of the programme. The implementing partner monitors the effectiveness of the rehabilitative activities and adopts remedial measures, where needed.

208. The Trust Fund considers that the activities of the current *Lubanga* programme conform to the activities described above to achieve Outcomes 1 to 3. The security situation in Ituri Province as well as the personal situation of many of the beneficiaries has considerably changed over the past months. Since January 2021, certain detailed adjustments to the programme, within the budgetary framework, have been conducted, thereby going into the direction of providing a starter sum for the socio-economic component (instead of monthly transport costs) and increasing the material support for the start of all beneficiaries' income generating activities instead of providing later support to only those beneficiaries who would need additional financial support.

209. The current *Lubanga* programme does not provide any support for Former Child Soldiers living outside of Ituri Province. Accordingly, the Trust Fund will aim at taking measures to ensure that such beneficiaries are found eligible and receive such support.

210. Finally the *Lubanga* programme provides for regular financial support – pension-like, in particular for persons who are not able to pursue income generating activities by themselves. This modality has not yet been implemented in the context of this programme. The Trust Fund considers that such financial support, as it is limited in time (3 years) may not be the best way to rehabilitate the relevant victims; instead, it may be preferable to consider together with such a victim how best to improve the victims' situation for the future (e.g. by allowing a family member to participate in an income generating activity). Accordingly, the Trust Fund has not included in this DIP pension as a separate category under socio-economic support as it considers that there is sufficient flexibility in the above-mentioned categories to address the situation of beneficiaries who are able to pursue income generating activities by themselves.

(2) Victims of rape or sexual slavery and children born out of rape or sexual slavery

211. As indicated by the Trial Chamber, there is a need to ensure that the additional harm caused to victims of rape and sexual slavery within the UPC/FPLC and children born out of rape is specifically recognised and addressed. The Trust Fund considers that all the above measures also serve to rehabilitate this category of victims. Additional measures in respect of this category of victims are proposed under Outcomes 4 and 5. An essential measure is, in line with the suggestions of the experts to the Trial Chamber, the hiring of a consultant to train the specialists working for the implementing partners. To those specialists belong the psychologists within the programme who are, to date, already trained in approaching SGBV victims, an essential requirement when working in the context of Ituri Province. Providing additional training will strengthen their treatment methods and approaches to SGBV victims.

The consultant will also look into additional measures that can be taken to address their specific situation in their individual contexts. In that way issues, such as the stigmatisation of SGBV victims and children born out of rape and sexual slavery can be addressed by the implementing partner to ensure the victims' rehabilitation in their families and communities.

212. As part of the programme, SGBV victims will receive the medical treatment necessary to heal their injuries and treat their illnesses, including those caused by rape or sexual slavery, with a specific focus on STDs as well as HIV/AIDS. For that purpose, the implementing partner is requested to take measures to help the beneficiaries become part of programmes that provide the required life-long treatment. The Trust Fund's programming is of limited duration and cannot, accordingly, provide itself life-long treatment to beneficiaries. In response to the query raised by the CLR1 on the arrangement intended to provide life-long treatment to certain victims,<sup>110</sup> the Trust Fund insists that no such provision of services is possible within the amount of liability set by the Trial Chamber. Once necessary initial physical treatment has been completed, beneficiaries may be referred to third parties for continued treatment.

213. The socio-economic measures are equally applicable to victims of rape and sexual slavery and children born out of rape or sexual violence. The Trust Fund will ensure, together with the implementing partner, that the socio-economic advisers are sensitised to the particularly vulnerable situation of these groups of victims. The consultant hired by the Trust Fund will also provide training to these advisers, as well as to those otherwise in contact with this group of victims. In addition, the Trust Fund will also stress with the implementing partner to focus on the creation of support network groups for these victims.

214. Children born out of rape or sexual slavery will receive all three components in terms of rehabilitation. These direct victims may need specific one-to-one psychological support or support in small groups of victims in a similar situation. Additional needs, specific to these victims, will also be addressed, see below paras 237 *et seq.*

### (3) Indirect victims of transgenerational harm

215. The specific harm suffered by indirect victims born after the commission of the crimes has not yet been addressed in the *Lubanga* conviction and order for reparations. Based on the Reparations Order, it is necessary to address this trauma, which mainly consists of psychological harm. Different from the *Lubanga* service based programme, where children are treated as indirect beneficiaries of the educational support provided to the direct beneficiaries,

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<sup>110</sup> CLR1 Request for Supplementary Information, ICC-01/04-02/06-2735-Conf-Exp, para. 20 (viii).

these indirect victims will have to be recognised as direct beneficiaries of the Former Child Soldiers Programme. As their harm is likely foremost psychological, they will, in any case, have access to psychological support measures provided by the programme. Should they be able to show that they also suffered physical or material harm due to the commission of the crimes, they can also access the other components of the programme.

216. In any case, they will, as a rule, be indirect beneficiaries of the educational support provided to the direct beneficiaries of the programme.

217. The Trust Fund notes the queries raised by the parties in relation to the reparations to victims having suffered transgenerational harm.<sup>111</sup> The Trust Fund refers to the above and clarifies that when a beneficiary is determined to having suffered transgenerational harm, he or she is, by the same token, automatically entitled to psychological rehabilitation. Thus, it is only in the event that they would demonstrate additional material or physical harm as a result of the crime committed by Mr Ntaganda that they would gain access to other aspects of the programme. This approach is in compliance with the Trial Chamber's Reparations Order in relation to transgenerational harm.<sup>112</sup>

**g. The Victims of the Two Attacks Programme (V2AP)**

218. The activities set out above will be implemented through a separate multi-annual programme carried out by one or more implementing partners of the Trust Fund for the benefit of the Victims of the Attacks. Currently, such implementing partners are not available beyond the limited scope of implementing the IDIP. The activities required to put such partners in place are addressed below in section D. It is clarified that the measures intended for the victims of rape or sexual slavery and children born out of rape or sexual slavery belonging to the Victims of the Attacks are similar to those intended for the group of Former Child Soldiers.<sup>113</sup>

**6. Approach to Outcomes 4 and 5 – symbolic measures and satisfaction**

219. Outcomes 4 and 5 are directly linked to symbolic reparation measures, including symbolic financial assistance, as well as to a number of satisfaction measures. Outcome 4 intends to create an understanding of the severity of the crimes and the consequent harm to beneficiaries' families and communities and beyond. Outcome 5 focuses on the beneficiaries

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<sup>111</sup> Defence Additional Matters, ICC-01/04-02/06-2740-Conf, paras 8(x); CLR1 Request for Supplementary Information, ICC-01/04-02/06-2735-Conf-Exp, para. 20(viii) and CLR2 Request for Supplementary Information, ICC-01/04-02/06-2737-Conf, para. 28(ii).

<sup>112</sup> Reparations Order, paras 73 and 182.

<sup>113</sup> CLR2 Request for Supplementary Information, ICC-01/04-02/06-2737-Conf, para. 28(vii).

and that they are satisfied that the harm they suffered has been recognised. Both outcomes are linked to similar measures, which are discussed together in this section.

220. At the outset, it must be underlined that a number of satisfaction measures as enumerated in paragraph 22 of the 2005 Basic Principles have already been taken.<sup>114</sup>

221. The Trust Fund recalls that the first source of satisfaction for the victims of the crimes committed by Mr Ntaganda is the conviction as upheld on appeal: the perpetrator has been held responsible. In addition, the Court, including the Office of the Prosecutor, have verified the facts and provided an account of the facts confirmed by an independent and impartial chamber. In addition, the Reparations Order in enumerating and stipulating the harm suffered by the beneficiaries can be seen as a further step in providing an official declaration restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victims. The Trust Fund, when informing victims that they are eligible to receive reparations, will take the next step in further weaving the thread of providing satisfaction to the victim: by this information, the victims' individual harm will be connected to the harm recognised by the ICC's judgments.

222. Building on this, the Trust Fund will carry out outreach and advocacy within the DRC and beyond to raise the awareness of the communities, families, children who attend school and the public at large about the severity of the crimes and about their consequences. Ideally, this would contribute to the prevention of such crimes in future. The Trust Fund will also raise awareness about the crime of rape and sexual slavery and about children born out of rape and sexual violence, with a view to sensitising the communities to their situation and needs.

#### **h. Community centres and similar symbolic measures**

##### **(1) Community centres for Former Child Soldiers**

223. The Trust Fund notes that similar to the *Lubanga* case, the situation of former child soldiers, in this case is particularly precarious, because, although the individuals in question are now adults, they remain deeply affected by their experiences as children. Those victims not only have to cope with their experiences personally and internally but externally these victims are subjected to tremendous shame and stigma that accompanies their status as former child soldiers. Symbolic reparations serve to publicly acknowledge the crimes committed, restore victims' dignity, and raise public awareness about the impact of the harm experienced by the victims and their communities.

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<sup>114</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, available [here](#).

224. The approach in the *Lubanga* case has been to enable the reintegration and redress of former child soldiers being victims in the *Lubanga* case by the awareness and acknowledgement of the affected communities that the enlistment, conscription, and use of child soldiers under the age of 15 is to be considered a crime, causing enduring harm to the former child soldiers and their families and consequently continuing to disturb the well-being of their communities.

225. Taking into account that the Trial Chamber considers that symbolic measures must serve a practical purpose,<sup>115</sup> the Trust Fund is of the view that the collective symbolic reparation programme in the *Lubanga* case may allow to achieving the abovementioned objective.

226. Trial Chamber II approved the Trust Fund's proposal to develop and construct symbolic structures, in the form of commemoration centres that will host interactive symbolic activities, in selected victims communities; and to develop mobile memorialisation initiatives in a maximum of victims communities, which will promote awareness raising of the crimes and resulting harms, reintegration, reconciliation, and memorialisation.<sup>116</sup> The Trust Fund concluded on 1 November 2021 the contracting process for a two-year reparation programme with one implementing partner, [REDACTED]. The Trust Fund believes that this programme can also serve as a channel to provide satisfaction measures in relation to additional harm caused to victims of rape and sexual slavery within the UPC/FPLC, children born out of rape and transgenerational harm without additional costs.

227. The Trust Fund proposes that, even though the implementation of these symbolic measures could already be approved in principle, further consultations will be required once the security situation so permits with regard to any additional satisfaction measures.

(2) Appropriateness of the construction of a community centre to be named after Abbé Bwanalonga

228. Pursuant to the Trial Chamber's directions, the Trust Fund has explored in-depth the appropriate ways to repair the harms caused by the murder of the Abbé Bwanalonga. In addition to the consultation of a sample of victims, the Trust Fund consulted with local authorities ([REDACTED]) and with the clergy ([REDACTED]) on this issue.

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<sup>115</sup> Reparations Order, para. 208.

<sup>116</sup> Trial Chamber II, *The Prosecutor v. Thomas Lubanga Dyilo*, Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparation, 21 October 2016, ICC-01/04-01/06-3251.

229. It results from these consultations that all individuals consulted agree on the appropriateness to remember the Abbé in particular through a centre, hosting community activities and named after the Abbé.

230. However, at this stage, the location of the centre needs to be clarified as well as the piece of land, on which it could be built. First, some of the individuals consulted expressed that, while the Abbé passed away in Mongbwalu, he had been active in various locations of Ituri, including in Bunia. A limited number of individuals indicated that the construction of the centre would be most appropriately located in Gety, which is the town of origin of the Abbé while some others mentioned that he had lost the connection with this town.

231. The Trust Fund proposes that, even though the implementation of a symbolic measure for the Abbé could already be approved in principle, further consultations will be required once the security situation so permits. This is necessary to ensure that such a centre will be carried out by the relevant community. In that respect, it will be essential for the Trust Fund and the CLR2 to be in the relevant communities and engage with them before starting any kind of procurement activity. Accordingly, the Trust Fund proposes to await an improvement of the security situation and to then continue carrying out consultations. Should the security situation not improve within the next year, the Trust Fund will focus its inquiry on Bunia and any commemoration activities in that location.

(3) Appropriateness of a plaque on the Sayo health centre

232. Consultations with victims and [REDACTED] have confirmed the validity of the Trial Chamber's suggestion to put a plaque on the Sayo health centre. As pointed out by the Experts and noted by the Trial Chamber, the Sayo health centre has been rebuilt since the attack and is functioning, albeit at limited capacity. In addition, for the time being, the population of Sayo has largely fled the locality.

233. Thus, the Trust Fund proposes to supervise the erection of a plaque/small monument on or before the centre which would commemorate its destruction and underline that it is protected under international law and that the perpetrator has been punished.

234. This measure will be implemented, subject to the following limitation: for the time being Sayo is rendered entirely inaccessible due to the ongoing conflict.

235. The erection of a plaque will thus be organised in due course, should the security situation change, and only after consulting directly with the Sayo community and the health centre to ensure that this is not considered a reason to increase tension around the Sayo health centre or the community. If the plaque was attached, this should happen in the context of a

ceremony, the modalities of which would be determined together with the victims' communities.

236. Any additional measures, such as those proposed during consultations by the victims, will be considered once the security situation allows for proper consultations and an assessment of the status of the Sayo health centre.

**i. Victims of rape and sexual violence and children born out of rape and sexual violence**

237. The Trust Fund plans for specific measures for victims of rape and sexual violence (forms of sexual and gender-based violence, hence referred to as "SGBV Victims") and their children born out of rape and sexual violence.

238. First, the direct victims of rape and sexual violence and the children born out of rape and sexual violence will each receive in recognition of the harm they suffered a sum [REDACTED]. This amount will be disbursed by the implementing partner for the rehabilitation programme to all such victims, whether they live inside or outside of Ituri Province. Such disbursement should, ideally, take place upon the intake of the beneficiaries in the programme or at any later point in time, as appropriate.

239. Second, the Trust Fund in cooperation with the implementing partner will collaborate with local officials to advocate for the issuance of ID cards and other legal documents for children born out of rape to reintegrate into society. Once this is arranged, the implementing partners will ensure that the documents are issued to the beneficiaries.

240. Third, the Trust Fund will hire as soon as possible in 2022 a sexual violence expert as a consultant to provide in Bunia capacity strengthening to the experts (e.g. psychologists) working for the implementing partners and other stakeholders. The Trust Fund intends to keep the budgetary impact of hiring such an expert very limited, as the consultant will be paid for specific services and outcomes, not for time working with the Trust Fund. At the same time, the Trust Fund will take measures to ensure that immediate family members and community health workers of victims of rape and sexual violence will be trained repeatedly in gender sensitivity and ethical standards and principles.

**j. Missing persons**

241. The Trust Fund observes that many victims have been denied closure due to the unknown fate of their loved ones, which may include Former Child Soldiers and disappeared Victims of the Attacks. Getting such closure is an essential part of satisfaction measures. As searching for specific persons is not within the scope of activities of any organisations in the

DRC or Ituri, the Trust Fund proposed to hire a consultant (either by the Trust Fund or the implementing partner). This person will use the information available in Ituri, and through investigation and research, to locate and identify specifically designated missing former child soldiers (dead or alive) or other persons missing since the two attacks. Whether this will lead to the expected result is unclear.

242. Considering that currently, the process of identification of new potential beneficiaries will still continue, even for the Former Child Soldiers, and that the current security situation does not allow for free movement within Ituri, the hiring of a consultant will likely not take place before 2023 and only when the security situation permits and the collection of possible cases of missing Former Child Soldiers or missing Victims of the Attacks appears to be complete.

243. At this stage of the process, the Trust Fund is in no position to provide the budgetary implications of hiring such consultants.<sup>117</sup> However, the CLR's will be informed of the recruitment of this consultant and will be associated with the definition of the terms of reference of his or her activities.

**k. Apology**

244. The Trial Chamber stressed that Mr Ntaganda could also proceed, as a satisfaction measure, to a voluntary apology to individual victims or to groups of victims, on a public or confidential basis. The Trial Chamber also mentioned that victims must first be consulted in order to determine whether excuses would be welcome and appropriate in this case.

245. The Trust Fund has consulted with a limited sample of Victims of the Attacks. The CLR1 has indicated that certain victims consider excuses to be appropriate in the present case.

246. After further consultations with victims when the security situation allows it, the Trust Fund proposes to liaise with Mr Ntaganda in order to determine whether he would consider presenting a voluntary apology and the form of it. Because apologies may not be imposed upon victims, the Trust Fund would ensure that such apologies are presented in a scenery that respects different trends of opinions amongst victims.

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<sup>117</sup> CLR2 Request for Supplementary Information, ICC-01/04-02/06-2737-Conf, para. 28 (iii).

## **D. Other, related Trust Fund activities**

### **1. Ensuring that the implementing partners are in place and can carry out the activities**

247. The Trust Fund's proposal, as set out above, is to use the *Lubanga* programme for the purposes of the Former Child Soldiers. In that regard, the Trust Fund considers that the following steps will need to be taken:

- a. Upon approval of this approach by the Trial Chamber, it may be considered together with the parties of both cases whether to also merge the *Lubanga* implementation stage with the *Ntaganda* implementation stage, i.e. to create a joint implementation stage for both cases. At a minimum, the reporting deadlines for the Update Reports in both cases should be aligned, preferably to the last working day of the months of February, May, August and November of each calendar year to enable the Trust Fund to take into account the quarterly reports of the implementing partners.
- b. The Trust Fund will have to consult with the implementing partner of the *Lubanga* programme, on how to best accommodate any changes required by this DIP. Given that the approval of the DIP may only take place after the start of the second year of implementation, which starts on 15 June 2022 (a no cost extension of the first year was enacted for the period 15 March to 15 June 2022), some changes may only be effected as of the third year of implementation.
- c. The Trust Fund will have to address with the Procurement Unit and the Registry's Legal Office whether their involvement is necessary and if so how best to address any additional requirements to the current programme. If needed, a sole source tender will have to be conducted. It can be expected that such a process will take up to nine months.

248. Upon approval of the DIP, the Trust Fund will start the process of hiring an SGBV consultant through an ICC human resources process. The position will be publicly announced. Such a process usually takes three to six months to conclude. The scope of work and expected intervention of the Trust Fund hired consultant will be discussed with the CLRs if they so wish<sup>118</sup> but will in any event focus on training the actors involved in the implementation of reparations, analysing, generally and on an individual level, the situation of the SGBV victims and proposing measures to best address their situation. The procurement process for the

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<sup>118</sup> CLR1 Request for Supplementary Information, ICC-01/04-02/06-2735-Conf-Exp, para. 22(i). See present document, paras 70, 211-213 and 240.

implementing partner(s) for the Victims of the Two Attacks Programme has started. The Trust Fund issued a call for expression of interests for organisations for the collective reparations awards with individual components for Victims of the Two Attacks Programme. Expressions of interests are the first step of the procurement process and issuing it at this stage allows for an assessment of eligibility criteria of the applying organisations and of the organisations interested to interact with the Court and Trust Fund, beyond those already consulted by the Trust Fund. A total of 26 organisations responded to the call for expression of interest. At the time of the Trial Chamber's approval, the Trust Fund will already be in a position to start preparing the scope of work for this programme. Given the number of steps and stakeholders involved in such a procurement process (see Attachment 2), and, in addition, given the high value of this programme, it can be expected that this process will take about one calendar year and conclude with the contract signature at the end of the first half of 2023.

249. Thereafter, the implementing partner(s) will need to start their operations and focus on collecting information from potential beneficiaries, as set out below in Part VII. Eligibility Mechanism. Once potential beneficiaries are found to be eligible by the Trust Fund, they can directly join the programme as soon as possible, i.e. foreseeably by mid/end of 2023.

## **2. Integration of IDIP project**

250. As set out above, the Trust Fund is currently carrying out reparation activities for the benefit of priority victims with urgent needs under the IDIP, for which two existing TFV assistance projects serve as vehicles.

251. The projects will continue and beneficiaries will be included in the IDIP and receive reparations until their intake in the relevant programme, i.e. the programme for Former Child Soldiers or the programme for Victims of the Two Attacks. For the latter, this means that they cannot be included in the overall programme before 2023 and that it will be therefore essential to reach a considerable number of Priority Victims of the Attacks who are in urgent needs until the Victims of the Two Attacks Programme fully starts.

252. For the former, it will need to be determined in consultation with the victims and CLR's and in particular the implementing partner, in how far the IDIP project should continue next to the main programme, given that the SGBV component of the main programme may require (a limited) time to be strengthened. However, preference may be given to, directly upon approval of the DIP, determine the eligibility of all participating *Ntaganda* victims and prepare them for intake in the Former Child Soldiers Programme. An additional urgent need determination would then not be required anymore.

253. At the intake conducted by the relevant implementing partner of each of the two programmes, the situation of each individual victim who benefitted from the IDIP will be evaluated. The purpose of this evaluation is to determine whether harm suffered by the beneficiaries has already been addressed and how. As a result of this evaluation, the relevant partner will inform the beneficiaries of the type of services they are entitled to receive under the relevant reparation programme.

254. Upon approval of the DIP, the Trust Fund proposes to align the reporting to the Trial Chamber about the IDIP with the reporting period for the DIP, preferably in one document, and at the last day of the months of February, May, August and November of each calendar year.

### **3. Outreach and risk mitigation strategy**

255. The Trust Fund, in collaboration with the Country Office, has been working on a first outreach strategy, in particular connected to the IDIP, shared with the legal representative of victims for their comments.

256. The strategy will be constantly amended based on the different milestones relevant to outreach, which are, among others:

- a. Finality of the Reparations Order;
- b. Approval of the DIP;
- c. Merger of *Lubanga* programme into the Former Child Soldiers Programme;
- d. Start of the Victims of the Attacks Programme.

257. The outreach strategy will aim at sensitising the population to the eligibility criteria and the content of the reparation programme on the one hand and on the other to the situation of the victims of the crimes, in particular SGBV victims and children born out of rape.

258. As set out below in Part VII, outreach will also be essential to identify the potential beneficiaries. In light of the highly volatile security situation prevailing in the region, the Trust Fund is monitoring the risks associated with conducting outreach and will ensure appropriate mitigating measures prior to, and during the campaign.

259. The Trust Fund will continue to share with the CLRAs the main points of communication and is grateful for the continued support of the Country Office.

### **4. Programme management, monitoring and evaluation**

260. The tasks of the Trust Fund in terms of programme management and monitoring and evaluation are set out above in Part III. The Trust Fund has also set out in the part on eligibility

its needs for a database to be able to monitor the progress made of each beneficiary in Part VII below.

261. The lessons learned from the *Lubanga* case are that the Trust Fund's programme staff is closely involved in any matters arising in respect of the implementation, including complaints of beneficiaries and managing on a day-to-day basis the risks around the programme implementation, in particular in respect of misinformation. These risks are mitigated through the engagement of the Trust Fund, a complaints system set up by the implementing partner under the guidance of the Trust Fund and a robust outreach strategy together with the Country Office and the implementing partner(s).

262. In addition to regular performance monitoring and reporting, the TFV will carry out a baseline study for the Former Child Soldiers Programme in 2022 in order to record and document the current situation of victims. The baseline will serve as a benchmark for measuring results in programme implementation, and so to identify the need for any necessary adjustment in the planning, scope and type of activities. The TFV has commissioned over the past year the work of independent evaluators for this purpose, who may also extend their work to the situation of the Victims of the Attacks before the start of the programme.

263. The TFV plans to commission an independent impact evaluation after 3 to 5 years of programme implementation.

### **E. Amount of liability, funding and duration of implementation**

264. The amount of liability is USD 30 million and includes the direct and indirect costs of implementation.<sup>119</sup> The Trial Chamber left it to the discretion of the Trust Fund to allocate this amount to the costs arising for the different programmes; a ruling that is currently under appeal.

265. The Trust Fund considers that it is not required to strictly allocate certain sums to the different groups of victims, in particular, because the total number of victims can currently merely be assumed. Therefore, allocations may change, provided that they remain within the overall amount of liability. This is in line with the Court's jurisprudence on this matter.<sup>120</sup> In addition, allocations can only occur once the Trust Fund has the relevant funds at its availability to complement the payment of reparation awards. The Trust Fund, however, considered the matter of programme resource allocation from the assumed perspective of having the entirety of the funds at its disposal. The below mirrors this perspective.

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<sup>119</sup> Reparations Order, para. 247.

<sup>120</sup> *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Trial Chamber VIII, Reparations Order, 17 August 2017, ICC-01/12-01/15-236, para. 139.

266. A formal indication of the change in allocations is the amount of liability decided against Mr Lubanga, given that the proposal is to merge the *Lubanga* programme into the Former Child Soldiers programme. The *Lubanga* Trial Chamber has held that the Former Child Soldiers should ideally benefit from USD 10 million of direct costs as a consequence of the crimes committed by Mr Lubanga. Given the indirect costs in this programme and additional costs arising for Child Soldiers/SGBV, and more specifically victims of rape or sexual slavery and children born out of rape or sexual slavery (individual compensation, the SGBV and gender consultant, etc.), the total sum of which Former Child Soldiers may benefit (including for symbolic and satisfaction measures) is, therefore, USD 12,727,000, if the Trust Fund receives the relevant voluntary contributions to complement this amount.

267. The Trust Fund notes the Defence query in relation to the duration of the implementation<sup>121</sup> and the CLR2's query in relation to the allocation of funds to the different reparative measures put forward<sup>122</sup>, to the way the Trust Fund intends to disburse funds taking into account the intended merging of the *Lubanga* and *Ntaganda* case<sup>123</sup> and in relation to the apportionment of funds between both cases and why the amount of USD 12,727,000 is deducted from the liability of Mr Ntaganda.<sup>124</sup>

268. Accordingly, to further explain these financial details: As all the victims in the case of *Lubanga* are also victims in the case of *Ntaganda*, and as the Trust Fund cannot provide reparations to the same group of victims for the commission of the same crimes twice (even while Mr Lubanga and Mr Ntaganda are jointly and severally liable), the Trust Fund would allocate a maximum of USD 10 million as the direct costs of repair for the harm caused by Mr Ntaganda, jointly with Mr Lubanga, to Former Child Soldiers (as this was the amount for which Mr Lubanga was held liable).

269. The implementing partners will have additional indirect costs of repair for running the programme and monitoring and evaluating the programme. In accordance with its own budget guidelines, the Trust Fund budgets an additional maximum of 15 percent for indirect costs and 3 percent for monitoring and evaluation, i.e. an additional USD 1.21 million.

270. In addition, the Trust Fund intends to put in place specific additional measures to recognise the harm suffered by victims of rape and sexual slavery and children born out of rape and sexual slavery. For this component, nearly USD 1 million would be required in addition.

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<sup>121</sup> Defence Additional Matters, ICC-01/04-02/06-2740-Conf, para. 8(ii).

<sup>122</sup> CLR2 Request for Supplementary Information, ICC-01/04-02/06-2737-Conf, para. 28(xvii).

<sup>123</sup> CLR2 Request for Supplementary Information, ICC-01/04-02/06-2737-Conf, para. 28(xiv).

<sup>124</sup> CLR2 Request for Supplementary Information, ICC-01/04-02/06-2737-Conf, para. 28(xv).

271. This brings the overall total amount for allocation for Former Child Soldiers to USD 12,727,000. This is the maximum allocation required for the Former Child Soldiers when giving full effect to the *Lubanga* Reparations Order. The remainder of the amount of liability will be allocated to providing reparations to Victims of the Attacks.

272. The Trust Fund notes that the Former Child Soldiers Programme may be appear costly, as the physical and psychological harm suffered by the estimated 3,000 Former Child Soldiers is often very severe and requires expensive treatment, given the period of traumatization (including repeated and diverse physical traumatization by using them actively in hostilities) extended over a prolonged period. As set out above, the socio-economic measures should, to the extent possible, be similar for all victims of Mr Ntaganda. The Trust Fund considers that it can provide rehabilitation measures and symbolic and satisfaction measures to the currently assumed 7,500 Victims of the Attacks beneficiaries (and a minimum of 14,000 victims who require primarily psychological support as explained in Part V) for the amount of USD 17,272,000.

273. This amount includes an estimate for symbolic financial reparations for victims of rape or sexual slavery and children born out of rape or sexual slavery [REDACTED], a lump sum *in lieu* of socio-economic rehabilitation for [REDACTED] beneficiaries living outside of Ituri Province [REDACTED], and a sum of money reserved for symbolic and satisfaction measures of [REDACTED]. The most expensive part of this programme is foreseeably the socio-economic rehabilitation part, which would, ideally, be similar to those in the *Lubanga* programme.

274. The indirect costs included are 15 percent of the sum required for the direct costs for all different forms of reparations for the Victims of the Attacks.

275. Evidently, these numbers are merely assumptions to enable the Trust Fund to develop this DIP. Ultimately, the allocation is subject to the Board of Director's complement decisions, which depend on revenue from voluntary contributions and donations that are also considered for investment in other reparation and assistance activities.

276. The eventual decisions of the Board of Directors to complement the funding of the two programmes will be guided by different factors, such as the concrete number of victims in the two programmes and the costs of specific physical and psychological treatments. In that respect, different funding scenarios are possible. The above sums for the two programmes are merely an indication, guided by the *Lubanga* liability sum. The Trust Fund will need to carry out at the time of each annual contract extension of the implementing partners an assessment of the concrete circumstances of both groups of victims, their numbers and costs arising.

Ultimately, this may lead the Trust Fund to decide on a different allocation of funds between the two programmes. In that regard, it is important to underline that the Trust Fund is not bound to fully complement the sum of liability ordered by Trial Chambers and that the *Ntaganda* Trial Chamber, specifically, did not make a determination of the liability of Mr Ntaganda for each of the two groups of victims separately, but one determination for all victims of Mr Ntaganda.

277. The Trust Fund, together with implementing partners, will need to monitor carefully the services provided to the beneficiaries as well as the number of beneficiaries in order to be in a position to provide as much as possible similar rehabilitation opportunities and similar measures to all the victims of this case.

278. The Trust Fund notes that half of the sum of liability of Mr Lubanga has already been complemented by the Trust Fund, which will be used for the Former Child Soldiers Programme. The complements and earmarked contributions for the *Ntaganda* case may be used for the benefit of both groups of victims, in particular, to address the specific harm suffered by victims of rape or sexual slavery, children born out of rape or sexual slavery as well as transgenerational harm. However, given that much more funds are already available for the Former Child Soldiers, it needs to be kept in mind that it is important to address without delay the Victims of the Attacks.

279. The Trust Fund considers that there is a range of possible annual revenue scenarios informing the possible scope and form of annual programme extensions. Accordingly, the reparation programmes will need to be flexible as to the services they can provide. Likely, prioritization of victims, in particular in the Victims of the Two Attacks Programme will be necessary. In that regard, the Trust Fund considers that the Trial Chamber's findings relevant to priority victims will guide it in the implementation of the reparations, in particular at the start of the Victims of the Two Attacks Programme.

280. Below an overview of possible programme funding scenarios as of December 2021 is included together with a possible timeline for the programme implementation (included at the end of this DIP), based on the assumption that it will be possible to fully complement USD 30 million for both cases *Ntaganda* and *Lubanga* and that the funds will be allocated between the two programmes as described above. It should be noted that the "Funding Needs" already deduct the available complement (as of 31 December 2021<sup>125</sup>) and are therefore at very low amounts for 2021 and 2022.

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<sup>125</sup> Additional EUR 275,000 have been earmarked to the case of *Lubanga* since then.

281. The funding scenarios may be further revised when the third version of this DIP is issued, at which time the TFV may have the benefit of insight from on-going discussions with its current group of donors, as well as from advisory services in relation to additional resource development opportunities.

## Scenario 1

	Total costs	Complement- Dec 2021 (in USD, even though usually in EUR)	March 2021 to March 2022	March 2022 to March 2023	March 2023 to March 2024	March 2024 to March 2025	March 2025 to March 2026	March 2026 to March 2027	March 2027 to March 2028	March 2028 to March 2029
Costs Former Child Soldiers	12,727,000	4,977,362	2,495,000	3,195,000	2,737,000	2,450,000	1,850,000			
Funding Needs Former Child Soldiers			0	712,638	2,737,000	2,450,000	1,850,000			
Costs Victims of the Attacks	17,273,000	1,751,998	150,000	200,000	3,500,000	4,000,000	4,000,000	3,000,000	2,000,000	423,000
Total costs	30,000,000									
Funding Needs Victims of the Attacks			0	0	2,098,002	4,000,000	4,000,000	3,000,000	2,000,000	423,000
Total Funding Needs			0	712,638	4,835,002	6,450,000	5,850,000	3,000,000	2,000,000	423,000

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## Scenario 2

	Total costs	Complement- Dec 2021 (in USD, even though usually in EUR)	March 2021 to March 2022	March 2022 to March 2023	March 2023 to March 2024	March 2024 to March 2025	March 2025 to March 2026	March 2026 to March 2027	March 2027 to March 2028	March 2028 to March 2029	March 2029 to March 2030	March 2030 to March 2031	March 2031 to March 2032
Costs Former Child Soldiers	12,727,000	4,977,362	2,195,000	2,595,000	2,300,000	2,077,000	1,850,000	950,000	760,000				
Funding Needs Child Soldiers			0	0	2,112,638	2,077,000	1,850,000	950,000	760,000				
Costs Victims of the Attacks	17,273,000	1,751,998	150,000	200,000	1,500,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	1,423,000
Total Costs	30,000,000												
Funding Needs Victims of the Attacks			0	0	0	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	1,423,000
Total Funding Needs			0	0	2,112,638	4,077,000	3,850,000	2,950,000	2,760,000	2,000,000	2,000,000	2,000,000	1,423,000

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282. The Trust Fund considers that, as set out for Scenario 2 that envisages a longer duration, raising USD 4 million for 2024 only for the case(s) of *Ntaganda/Lubanga* is a real challenge, in particular given the needs of other reparation cases, such as *Ongwen*. However, the Trust Fund remains committed to striving to achieve this goal by March 2024 in order to provide adequate and equitable reparations to both groups of victims. As stated above in the section on

risks, if such funding goals were not achievable, this would have an impact on the number of victims that could receive socio-economic services of a similar breadth as those who are currently receiving services. Alternatively, if it was necessary to provide reparations to the same number of victims or even more victims, it would be necessary to adapt in particular the scope of socio-economic measures available and to thereby reduce the overall costs.

283. The above estimates already show now that raising the funds full complement of the payment of the *Lubanga* liability sum will certainly take longer than the currently foreseen contract duration for the Former Child Soldiers programme. Therefore, adaptations, including to the contract with the implementing partner, may be required as the circumstances develop. As to the services contract with the implementing partner(s) for the Victims of the Two Attacks Programme, the Trust Fund will have to provide for sufficient flexibility in relation to the duration and the yearly extension sums to accommodate the uncertainties in terms of numbers of victims and funding.

## **F. Work plan**

284. The draft work plan is meant as an adaptable and flexible instrument for the Trust Fund to monitor that the milestones of the programme are pursued and achieved as set by the logical framework and the above additional activities, as well as the activities relevant to the eligibility process. The work plan is attached at the end of this DIP. The likely approval date of the DIP is adjusted to 1 July 2022. Further adjustments to the plan will be required upon approval.

285. The plan relates to both programmes – the Former Child Soldiers Programme (FCSP) and the Victims of the Two Attacks Programme (V2AP).

286. Even though the *Lubanga* programme is running and has taken the first hurdles over the past months, changing this programme into the FCSP will require additional adjustments that have to be implemented together with the implementing partner and in line with the procurement and contractual frameworks. By the time that the third year of implementation starts, at the latest, all necessary adjustments will have been made. Five aspects, in particular, will be different from the current scope of work for the *Lubanga* programme: the partner's role in the identification of new beneficiaries and of victims who suffered from rape and sexual slavery, and of children born out of rape and sexual slavery, providing symbolic reparations, and express satisfaction to such victims, providing rehabilitation to children born out of rape and sexual slavery, the focus on transgenerational harm, and providing an *in lieu* lump sum to victims residing outside of Ituri. Especially the aspects relevant to providing money may only

be implemented as of the third year of implementation, given that the approval of the DIP will likely only occur after the second year of implementation already started.

287. An additional aspect relevant to the Former Child Soldiers Programme relates to the eligibility process, given that the legal representatives in the case of *Lubanga* already identified high numbers of additional victims. Therefore, before additional identification will be required through the implementing partner, those victims will have to run through verification and be channelled into the programme.

288. In relation to the Victims of the Two Attacks Programme, the Trust Fund considers that, given the complexity of the procurement due to the high contract value, it will take about one year after the approval of the DIP to contract the implementing partner and/or consortium that will implement this programme. Thereafter, the partner will need between 3 to 5 months to set up the relevant organisational structures, conclude agreements with partners etc. Only then can start:

- a. the intake of the victims who were already found eligible;
- b. the identification process for new beneficiaries;
- c. the interviews for additional information from those participating Victims of the Attacks, who did not pass the VPRS' preliminary assessment that were carried out in 2020 and early in 2021.

289. Accordingly, only a limited number of victims will benefit already in 2023 from the programme; it cannot be expected to start at full speed before Q2 of 2024.

290. The attached table contains many details; most of them are indicative only, that provide further guidance through the different stages of the programme. Essential to both programmes is and given the uncertainties involved, that the intake of beneficiaries and provision of rehabilitation services is continuous over the duration of the programmes.

291. As set out in this DIP, for the symbolic measures relevant to the V2AP, it will be essential to involve the relevant communities, victims and civil society organisations. Such a process can only take place once a considerable number of beneficiaries is found eligible and the security situation in Djugu territory allows for such consultations.

292. The Trust Fund will organise independent evaluations of both programmes based on the LogFrames developed as part of this DIP.

## VII. ELIGIBILITY MECHANISM

293. In the Reparations Order, the Trial Chamber instructed the TFV “to include in its draft implementation plan a detailed proposal as to the way in which it expects to conduct the administrative eligibility assessment, based on the eligibility requirements established by the Chamber in the present order. The TFV shall ensure that its proposals ensure a fair, efficient, and expeditious process, taking into consideration the Registry’s capacity to assist”.<sup>126</sup>

294. Pursuant to the Reparations Order, the Trust Fund submitted on 8 June 2021, an IDIP for victims in urgent need with a proposal of an eligibility mechanism, in particular for the victims in urgent need.<sup>127</sup> The IDIP was partly approved by the Trial Chamber in the Decision of 23 July 2021,<sup>128</sup> but the Trial Chamber directed the Trust Fund to “present an alternative proposal for the eligibility assessment and *urgency* screening of victims to benefit from the IDIP, fully taking into consideration the instructions of the Reparations Order and the additional guidance provided in this Decision”.<sup>129</sup> The Trial Chamber’s order extended only to the eligibility assessment and urgency screening of those individuals who shall benefit from the measures proposed in the **IDIP**. In its First Report on the implementation of the IDIP submitted on 23 September 2021,<sup>130</sup> the Trust Fund made limited submissions on the proposed eligibility assessment model for the purpose of the IDIP only, which were approved by the Trial Chamber.<sup>131</sup> The approved proposals in the context of the IDIP integrate within the general system proposed herein.

295. The TFV developed a written proposal for an eligibility assessment relevant to the entire *Ntaganda* case that contained three options and was shared for inputs with the parties and the Registry on 23 November 2021. Their inputs were received on 1 December 2021<sup>132</sup> and 10 December 2021<sup>133</sup> respectively. A follow-up meeting between the Registry/VPRS and the TFV was held on 1 February 2022, which brought further clarity to the process to be

<sup>126</sup> Reparations Order, 8 March 2021, [ICC-01/04-02/06-2659](#), para. 253 (“Reparations Order”).

<sup>127</sup> Report on Trust Fund’s Preparation for Draft Implementation Plan, 8 June 2021, [ICC-01/04-02/06-2676-Conf](#).

<sup>128</sup> Decision of 23 July 2021, [ICC-01/04-02-06-2696](#).

<sup>129</sup> Decision of 23 July 2021, [ICC-01/04-02-06-2696](#), para. 38.

<sup>130</sup> Trust Fund first progress report on the implementation of the Initial Draft Implementation Plan and Notification of Board of Director’s decision pursuant to regulation 56 of the Regulations of the Trust Fund, [ICC-01/04-02/06-2710-Conf](#).

<sup>131</sup> First IDIP Report, [ICC-01/04-02/06-2710-Conf](#), paras. 39-54; Decision on the TFV’s First Progress Report on the Implementation of the Initial Draft Implementation Plan and Notification of Board of Director’s decision pursuant to regulation 56 of the Regulations of the Trust Fund, 28 October 2021, [ICC-01/04-02/06-2718-Conf](#) (“Decision on the First IDIP Report”); see also Decision on the Third Update Report.

<sup>132</sup> Email from the CLR 1 on 1 December 2021 at 15h51; Email from the CLR2 on 1 December 2021 at 16h10; Email from the Defence on 1 December 2021 at 15h58.

<sup>133</sup> Email from the VPRS on 10 December 2021 at 17h27.

pursued in finding the most resource-efficient solution to the body carrying out the verifications.

## A. Background

### 1. Terminology

296. For the sake of common understanding, some terminological clarifications are in order. The Trust Fund recognises that multiple definitions can be used and merit consideration.

297. The **eligibility assessment** (also called verification of the eligibility or eligibility assessment mechanism) is the mechanism aimed at “determining the individuals among the potential victims who may qualify to benefit from reparations in the case. [It] shall be made in accordance with the eligibility criteria and the standard and burden of proof as set out in the Reparations Order. The eligibility assessment ensures that reparations are granted only to victims of the crimes for which Mr Ntaganda was convicted”.<sup>134</sup> While the Trial Chamber has directed the Trust Fund to set up the mechanism – that is the procedure<sup>135</sup> –it has already provided all parties and participants with the eligibility criteria, the standard and burden of proof to be applied, which are currently still under appeal.<sup>136</sup>

298. There is no definition of “eligibility” in the Rome Statute’s framework. For the purpose of *individual reparation awards*, the Regulations of the Trust Fund refer to **identification** and **verification** of beneficiaries as well as to the approval of a final list of beneficiaries by the Board of Directors. For collective reparation awards, however, no provision sets out the method of verification of the eligibility. Regulation 69 of the TFV Regulations merely provides that the method of implementation must be developed by the Trust Fund in a draft implementation plan. The Trust Fund considers that proposing a method of implementation necessarily implies defining a process to determine the eligibility into the programme.

299. The **urgency screening** for the purpose of the **IDIP** had been ordered by the Trial Chamber to “determine whether any of the victims requiring priority treatment are currently in a situation in which they need to receive immediate physical and/or psychological medical care, and/or support due to financial hardship that endangers their life”.<sup>137</sup> The Trial Chamber has clarified that the urgency screening should be conducted in accordance with the same standard and burden of proof than those applicable for the eligibility assessment. The Trial

<sup>134</sup> Decision of 23 July 2021, [ICC-01/04-02-06-2696](#), para. 31.

<sup>135</sup> Decision of 23 July 2021, [ICC-01/04-02-06-2696](#), para. 35.

<sup>136</sup> Decision of 23 July 2021, [ICC-01/04-02-06-2696](#), para. 31. See also Reparations Order, [ICC-01-04-02/06-2659](#), paras. 131-147.

<sup>137</sup> Decision of 23 July 2021, [ICC-01/04-02-06-2696](#), para. 32.

Chamber also provided the parties and participants with the categories of victims deemed eligible for urgency measures.<sup>138</sup> The Trust Fund’s proposal to make the urgency screening part of the eligibility process was approved by the Trial Chamber in its Decision on the First IDIP Report.

300. Accordingly, in the *Ntaganda* case it is necessary to assess the eligibility of potential beneficiaries in direct connection with the approved IDIP or DIP programme.

## 2. Trial Chamber’s instructions

301. In its Decision of 23 July 2021 and in the Decision on the First IDIP Report, the Trial Chamber reiterated that the eligibility assessment should be a **fair, efficient, and expeditious** process.<sup>139</sup> It further clarified that it should be **harmonised, centralised** and **similar** for all the victims.

302. As to the **role of the parties**, the Trial Chamber held:

Further, in the view of the Chamber, the parties should have no direct involvement in the eligibility assessment or the urgency screening, although – as detailed below – the CLR’s should be available to assist and represent the interests and rights of all potential beneficiaries of reparations. In addition, contrary to the Defence’s submission, the rights of the convicted person are guaranteed, as the Defence have had the opportunity to challenge the applicable standards of proof and causation and will be able to make submissions on the TFV’s proposed administrative eligibility assessment before its approval.<sup>140</sup> [footnotes omitted]

303. It further stipulated that “the Defence shall not be granted an opportunity to review the TFV’s individual assessment of the eligibility of victims, as requested by the Defence.”<sup>141</sup>

304. The Trial Chamber held that the assessment shall **not be delegated** to external entities, as this may lead to inconsistencies and as it does not appear to be the most efficient and expeditious way to conduct this process.<sup>142</sup> Taking into account this instruction, the Trust Fund made an alternative proposal in relation to the role of the implementing partners which was approved by the Trial Chamber which held that “[i]n practice, the role currently assigned to the implementing partners in the eligibility assessment and urgency screening is limited to supporting the TFV in gathering the relevant information, but the final determination remains within the TFV’s Secretariat”.<sup>143</sup>

<sup>138</sup> Reparations Order, [ICC-01-04-02/06-2659](#), para. 214.

<sup>139</sup> Reparations Order, [ICC-01-04-02/06-2659](#), paras. 105, 140 and 253.

<sup>140</sup> Decision of 23 July 2021, [ICC-01/04-02-06-2696](#), para. 37.

<sup>141</sup> Decision on the First IDIP Report, [ICC-01/04-02/06-2718-Conf](#), para. 20.

<sup>142</sup> Decision of 23 July 2021, [ICC-01/04-02-06-2696](#), para. 36.

<sup>143</sup> Decision on the First IDIP Report, [ICC-01/04-02/06-2718-Conf](#), para. 20.

305. As to the **involvement of the Registry**, the Decision of 23 July 2021,<sup>144</sup> as well as in the Decision on the First IDIP Report,<sup>145</sup> the Trial Chamber “consistently highlighted the ‘importance of using resources and expertise available at the Court for the benefit of the victims’ and has instructed the TFV to ‘consider whether the administrative eligibility assessment and urgency screening could be carried out by the Registry in whole or in part’.”

The Trial Chamber continued:

Against this background, the Chamber welcomes the TFV commitment to make full use of the Registry’s expertise and experience by relying on the preliminary assessment conducted by the VPRS [...] regarding the participating victims in the case that are potentially eligible for reparations. In order to ensure harmonisation and consistency and to speed up, streamline, and optimise the process as a whole, the second group of victims to be enrolled in the programmes, i.e., victims identified so far – because they have submitted applications forms or were registered as new potential beneficiaries – but who did not participate in the trial proceedings, could already be preliminarily assessed by the VPRS. Accordingly, the Chamber encourages the TFV to start coordinating with the VPRS for it to commence as soon as practicable with the preliminary assessment of eligibility for reparations of those victims and, potentially, their preliminary urgency screening.<sup>146</sup> [footnotes omitted]

306. As to the **role of the Chamber**, the Trial Chamber held in the Decision of 23 July 2021 that it “envisions that its role and therefore litigation before the Chamber will be minimal, with the Chamber solely retaining oversight over the implementation process and inviting and considering submissions only when strictly necessary”.<sup>147</sup> In the Decision on the First IDIP Report, it further stipulated that it “does not consider it necessary to play a role in the administrative eligibility assessment and urgency screening that would go beyond overseeing the design of the process as a whole and receiving progress reports and statistical information as to the victims’ eligibility assessments”.<sup>148</sup>

307. As to the **role of the CLR**s, “the Chamber orders the CLRs, as OPCV counsel, to provide general support and assistance to any potential beneficiary during the administrative eligibility assessment and the urgency screening, particularly to those assessed as non-eligible or that do not qualify for assistance pursuant to the IDIP”.<sup>149</sup> In its Decision on the Third Update Report of 10 February 2022, the Trial Chamber confirmed the Trust Fund’s interpretation that “LRVs would only become engaged on an individual basis with potential beneficiaries in case of a negative eligibility decision”.<sup>150</sup>

<sup>144</sup> Decision of 23 July 2021, [ICC-01/04-02-06-2696](#), para. 38.

<sup>145</sup> Decision on the First IDIP Report, [ICC-01/04-02/06-2718-Conf](#), para. 22.

<sup>146</sup> Decision on the First IDIP Report, [ICC-01/04-02/06-2718-Conf](#), para. 23.

<sup>147</sup> Decision of 23 July 2021, [ICC-01/04-02-06-2696](#), para. 40.

<sup>148</sup> Decision on the First IDIP Report, [ICC-01/04-02/06-2718-Conf](#), para. 17.

<sup>149</sup> Decision of 23 July 2021, [ICC-01/04-02-06-2696](#), para. 41.

<sup>150</sup> Decision of 10 February 2022, [ICC-01/04-02/06-2754](#), para. 12.

308. In relation to the **urgency screening**, the Trial Chamber also gave useful guidance as to the design of the mechanism, indicating that “the urgency screening should take place as close as possible to the moment in which the victims will be provided with the relevant emergency services”.<sup>151</sup>

### 3. Beneficiaries

309. The potential beneficiaries can be divided into different groups.

310. **Represented victims** – A first group of potential beneficiaries is composed of victims who filled out participation forms and who were represented at trial and continue to be represented throughout the reparations proceedings. This group can be divided into two sub-groups, namely 283 former Child Soldiers represented by CLR1 and 1,836 Victims of the Attacks represented by CLR2. During the reparations proceedings, the Registry performed a preliminary assessment of the information these individuals provided and reached the conclusion that all 283 Former Child Soldiers would be eligible for reparations and that approximately 600 Victims of the Attacks were not eligible for reparations, an assessment disputed by the CLR2.

311. **Victims identified at reparations stage** – Before March 2021, the Registry engaged in a mapping exercise of new potential victims, which resulted in 53 potential new beneficiaries who filled in the VPRS consultation form.<sup>152</sup>

312. **Lubanga Child Soldiers** – As the cases of *Ntaganda* and *Lubanga* fully overlap, the *Lubanga* Child Soldiers may also be considered beneficiaries of the *Ntaganda* case.<sup>153</sup> The final date for submitting applications for inclusion in the *Lubanga* programme was 1 October 2021.

313. **Unidentified victims** – As set out in this DIP, the size of this group of future beneficiaries is still unknown but is expected to be large.

314. This means that a part of the beneficiaries of the reparation award has already participated in the trial and judicial reparation proceedings and is legally represented (by the CLR). Another part may have made contact with the Court, and in particular with VPRS.

315. VPRS is based in headquarters only. Their main focus lies on [REDACTED] (including data from forms into the management of the Victims Application Management System

<sup>151</sup> Decision of 23 July 2021, [ICC-01/04-02-06-2696](#), para. 33.

<sup>152</sup> ICC-01/04-02/06-2369-Conf-AnxI, paras. 38-39 and 41.

<sup>153</sup> The LRVs of the *Lubanga* case expressed repeatedly at meetings that they should automatically be considered victims of the *Ntaganda* case.

(“VAMS”), the VPRS database) and on making assessments (Rule 85 assessment) of whether the victims fall within the scope of the situation and/or the case (for pre-trial and trial participation) through the VPRS’s Legal Unit.<sup>154</sup> The Trial Chamber then decides on the basis of such assessments whether the victims have standing in judicial proceedings. VPRS also has a Field Unit. To that belong staff members in Country Offices who are substantially linked to the work of VPRS but fall under the supervision of the Chief of the Country Office. They are referred to as VPR staff. Currently, two VPR staff members are based in Kampala and none in the DRC.

316. Accordingly, contact is also possible with the Country Office staff, [REDACTED], [REDACTED].<sup>155</sup>

317. Contact may also be possible one of the intermediaries of the Court (VPR staff) or the CLR, or of the Trust Fund. These intermediaries form the main link between the Court and the victims. They may work for the different entities at the same or at different points in time, e.g. consecutively (LRV, VPRS, TFV).

318. The majority of the future beneficiaries, however, will not yet have contacted anyone. Rather, the victims keep coming forward and it is expected that this will start once the outreach and the programmes fully start functioning and the first beneficiaries receive reparations. The eligibility process proposed below takes into account the existence of these categories of individuals and provides for a uniform way of deciding on their eligibility.

#### **4. TFV programming and the role of the beneficiary**

319. Insofar as the collective reparations are individualised, the Trust Fund needs to monitor **throughout the implementation of the programme**, which reparative services the victims receive, whether all beneficiaries receive the reparations, to which they have a right, the quality of the services, the respect of the Reparations Principles, including do no harm and confidentiality principles, as well as which impediments the implementing partner is experiencing in providing services to specific beneficiaries. Key Performance Indicators are measured and reported to all relevant stakeholders throughout the life cycle of the programme. At the end of the implementation process, the Trust Fund will need to be able to report on the outputs and outcomes of the programme in detail to the relevant Chamber, CLR, its donors, as well as the Assembly of States Parties (“ASP”). In addition, the Trust Fund will need to

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<sup>154</sup> See VPRS comments, para. 3.

<sup>155</sup> See e.g. minutes of the meeting held on 20 September 2021 between the TFV, the VPRS and the Country Office in the presence of the LRVs concerning the eligibility assessment in reparations in the *Ntaganda* case.

request independent evaluations including victim satisfaction surveys of the reparation programme and the reparations received by the beneficiaries.

320. Accordingly, the Trust Fund underlines that the process of identification and verification and the determination of eligibility are merely one part of the entire programming of the Trust Fund in implementing reparation awards. The programming that is relevant to the beneficiaries has the following 7 steps:

1. Outreach about the programme towards potential beneficiaries;
2. Identification: Contacting and informing potential beneficiaries about their rights and collection of information relevant for the verification of eligibility;
3. Verification: Determination of whether the victims meet the Trial Chamber's eligibility criteria and the programme's criteria (such as urgency screening) and transmission to all relevant actors;
4. Intake of the beneficiaries found eligible in the implementing partner's programme/project;
5. Implementation of reparations by the implementing partner as monitored, supervised and evaluated by the Trust Fund, while the Trust Fund also has recurring reporting obligations to the Trial Chamber and other stakeholders;
6. Final financial and narrative report to the Trial Chamber;
7. Final evaluation of the programme/project (usually by TFV commissioned evaluators) in order to assess the impact of the programme.

321. The TFV's approach is that the process of identification and verification of beneficiaries is but part and parcel of an entire process of interaction between Trust Fund, implementing partner and beneficiary, as described in the previous paragraph. The eligibility process is, in that respect, the TFV's starting point for its interaction with the victims that continues throughout the lifecycle of the programme.

322. In devising this starting point, the do no harm principle is extremely important, which has been recognised by the Trial Chamber as a reparations principle. In that regard, the Trust Fund considers it important to devise the timeline in a way that allows the interaction with the victims to be as close as possible in time to the inclusion in the programme.

323. Accordingly, the below aspects are essential considerations that the TFV has taken into account in designing the eligibility process:

- a. Have a simple and efficient identification and verification process in place that ensures that verification takes place shortly after identification;
- b. Ensure that a programme's implementing partner will be in place contemporaneously to the determination of eligibility;
- c. Ensure that information received in the identification and verification process can be shared, insofar as relevant, with the implementing partner and ensure that all information collected by the implementing partner about reparations received by the beneficiaries as well as contact data etc. can be shared with the Trust Fund;
- d. Identify potential risks in the process of outreach and identification, analyse them and identify avenues to address the risks (see above section on risks).

324. This means that it is essential that the time between receiving information from new victims and the determination of their intake in the programme is **as short as possible**. The Trust Fund can adhere to this requirement by planning for sufficient staff to address the identification and verification process and by only starting to get information from new victims **once the reparation programme is in place**, i.e. an implementing partner contracted. The Trust Fund has noted the risks associated with this methodology raised by the CLR2 and his suggestion that mapping should be first conducted to determine where the victims are and their number, after which the programme will be designed. As demonstrated in the present DIP, however, sufficient information exists already to design a proposed programme, including the flexibility necessary to adjust for victims who would find themselves in other locations. Proceeding vice-versa would require entering into contacts with victims multiple times which should be avoided pursuant to the do-no harm principle. The suggestions made by the CLR2 that the proposed programme should foresee the necessary facility for guaranteeing beneficiaries access to these programmes have been fully taken into account in preparing the programme.

325. In addition, the Trust Fund will need to have in place a database that allows for the sharing of information about beneficiaries between TFV and the implementing partner and for the close monitoring of the progress made. In that respect, the Trust Fund, together with VPRS and the IT Management Section of the Registry, has been exploring requirements and options. In this process, it became clear that the [REDACTED]. The Trust Fund has therefore continued to explore with the IT Management Section of the Registry how best to satisfy the TFV's requirements; a process that is currently underway.

326. Should it be necessary, e.g. in the meantime, to make use of the VPRS database, the Trust Fund and VPRS would have to conclude a memorandum of understanding as to the use of the data in VAMS, keeping in mind that the Trust Fund and not the Chamber or the Registry will need to be the controller of the newly collected personal data relevant to collective reparation awards.<sup>156</sup>

## **B. Identification**

327. All participating victims and those who already provided information to the Court or any part thereof are identified and are considered potential beneficiaries of the reparation programme that will be put in place in line with the approved DIP. Accordingly, at issue under this section are the potential beneficiaries who have not yet been identified.

### **1. Background**

328. Identification of new beneficiaries has been a time and resource-intensive process in the cases of *Lubanga* and *Al Mahdi* and different models of contacting victims have been applied. In the case of *Lubanga*, after the Trial Chamber took decisions on a sample of victims, the relevant Trial Chamber requested the TFV, to be in charge of this process together with the CLRAs as of 2018. Since then, TFV together with the CLRAs, based on the form developed by the TFV, interviewed in person more than 1,000 victims, in order to complete the application form and hold an interview with a view to assessing whether these victims were UPC child soldiers. One VPR (Country Office) staff assisted the TFV in this process, upon TFV request (with the TFV covering the costs of this mission), insofar as his schedule allowed and a need for his assistance arose. In the case of *Al Mahdi*, aside from the 409 victims identified by the LRV at the early stages of the cases (and 398 of whom turned out to not be eligible for reparations pursuant to the Reparations Order), the Trust Fund initiated a process of identification of more than 1,000 potential beneficiaries in cooperation with the LRV through missions, personal contacts and gatherings, during which victims were assisted in filling out their application forms by representatives of the TFV and LRV.

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<sup>156</sup> In this regard, the Trust Fund considers that there is a difference between individual reparation awards (*Al Mahdi*) and collective reparation awards. In the case of the former, the individual order is for the benefit of an identified victim and this order needs to be enforceable against the convicted person. Accordingly, the relevant information about the beneficiary, as collected by the Trust Fund, needs to be under the control of the Court (Chambers, Presidency). In case of collective reparation awards, such approach would only be required, if the Chamber (as in *Lubanga*) retained full authority over each application.

329. In both processes, the main goal was to collect information in a structured way. Another main goal of establishing personal contact with the victims was that victims who were clearly not falling within the scope of the case/order would not be encouraged to apply. Explaining the right to reparations and the link to the case and scope of the case/order/programme is, therefore, an essential aspect of the process of identification.

330. Both processes, i.e., in particular the interview, were extremely time and resource-intensive for both the Trust Fund and the Court (in terms of costs for legal aid and travel costs) but led to the desired result of getting filled application forms and supporting materials. In both processes, these forms were then prepared and finalised by the CLR's and transmitted to the Trust Fund after registration of their information in the VPRS database VAMS.

## 2. Questions and consultation process

331. The questions that need to be addressed in relation to the identification process are:

- a. How, when and by whom will potential beneficiaries be informed of their rights to reparations and identified to ensure that it is conducted in a fair cost-efficient and harmonised fashion (Outreach and identification); and
- b. How, when and by whom is relevant information collected from potential beneficiaries (Collection of information) to ensure that it is harmonised and centralised.

332. In *Ntaganda*, the Trial Chamber already decided that the CLR's would not be included in the process of identification (see above). Accordingly, an identification process as conducted in *Lubanga* since 2018 or *Al Mahdi* has already been excluded and cannot be put in place in the case of *Ntaganda*.

333. The CLR2 fully supports this approach, as expressed during the consultations held by the TFV. He proposes that "the VPRS is in charge of collecting objective information" and that the TFV is in charge of conducting the eligibility determination. He underlined that, in any event, he considers the information needs to be collected by a neutral body.

334. During the consultations with VPRS and the Country Office (in the presence of the CLR's),<sup>157</sup> they first expressed that they assumed that not many more than [REDACTED] would need to be identified and interviewed in total. They thought that this task would be manageable, e.g. through field missions. As set out above already, more than 2,000 victims (including Victims of the Attacks and Child Soldiers) have already been in contact

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<sup>157</sup> Minutes of the meeting held on 20 September 2021 between the TFV, the VPRS and the Country Office in the presence of the LRVs concerning the eligibility assessment in reparations in the *Ntaganda* case.

with various actors. In addition, considering the security problems in the Djugu territory over the past many years, it can be assumed that the number of potential beneficiaries will be much higher.

335. Considering such much higher expectations in terms of numbers, both Registry sections – Country Office and VPRS – expressed that they would need to be considerate in respect of what this would mean in terms of workload for their respective offices. It was discussed whether the intermediaries in the field could collect the information. However, it was recalled that this was discussed in other contexts and that the intermediary approach has not been chosen in the past due to the limited quality of the information received. Intermediaries are primarily tasked to make the contact with the victims and ensure that victims come to the meeting points with TFV or VPRS or the Country Office.

336. The Trust Fund also consulted with the CLRs of the *Lubanga* case.<sup>158</sup> Given the deadline of 1 October 2021, they expressed their concern in relation to the potential beneficiaries who could not be reached for interviews due to the security situation but with whom they had been in contact. Their concern related to the need to provide them expeditiously with concrete information as to the *Ntaganda* reparation programme and with a clarification of the role of the *Lubanga* CLRs in this process.

### **3. Proposal for the identification process**

337. The proposal below includes the three critical steps to ensure an identification process that addresses as many potential beneficiaries as possible: Outreach, Identification of potential beneficiaries and collection of information.

#### **a. Outreach towards potential beneficiaries**

338. Providing affected communities and potential beneficiaries with complete, timely, precise and accessible information as to their rights is and can only be achieved by relying on all actors involved in the field, including the Registry “to speed up, streamline, and optimise the processes, avoid unnecessary duplication, and comply with all principles on reparations.”<sup>159</sup>

339. Bearing this overarching consideration in mind, the Trust Fund proposes that an outreach campaign be conducted, under the auspices of the Trust Fund, together with the Country Office, VPRS and these sections’ local networks and intermediaries, as well as the Trust Fund’s partners. A number of factors are relevant for the design of such a campaign.

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<sup>158</sup> Minutes of the meeting held on 16 November 2021 between the TFV and the LRVs concerning the implementation of reparations in the *Lubanga* case.

<sup>159</sup> Decision of 23 July 2021, [ICC-01/04-02-06-2696](#), para. 45.

340. First, the number of case locations is high and geographically spread out. Moreover, since 2003, potential beneficiaries have been very mobile and are residing in places beyond the case locations. In addition, the number of internally displaced persons within Ituri is very high. As repeatedly underlined by all parties and participants, the security situation in most of these locations is such that no regular travels and meetings with the affected communities by international staff is possible, if at all. The security situation has worsened in autumn 2021, in that currently, even international humanitarian organisations have suspended their actions in the relevant territories in Ituri.

341. Second, for the Reparations Principles to be fully applied, it is critical that all potential beneficiaries receive the same information. Accordingly, all communication materials are to be designed by the Trust Fund jointly with the Registry and in consultation with the CLR. Insofar as Trust Fund's implementing partners are already in place, these partners need to be made part of the design and strategy of the outreach campaign and carry the same messages. The materials will be harmonised so that the same messages are conveyed throughout Ituri. Considering the time elapsed since the commission of the crimes and the displacement of the population, the Trust Fund endorses the CLR1 submission to make sure that certain outreach activities are conducted on the totality of the territory of the DRC, and will explore avenues to do so as well in Western Uganda.

342. Third, in order for messages to be tailored to the local realities and understood, these materials will need to be prepared, translated and disseminated with the assistance of locally-based persons and organisations, such as intermediaries, implementing partners and civil society organisations, whose expertise and knowledge of the terrain is of the essence in this process. Additionally, materials will have to be diversified to reach out to the maximum number of beneficiaries, including less reachable groups such as women: radio programmes, meetings, leaflets etc. will be prepared.

343. In short, the outreach campaign will be designed and conducted by the Trust Fund and, insofar as the Registry has availability of staff and resources, jointly with the Registry and its networks.

344. Outreach campaigns will be conducted throughout the life cycle of the reparation programme. Once all implementing partners are in place to implement the DIP, outreach will be part of their programming, under the guidance of the TFV and with the assistance of the Country Office, insofar as possible.

345. As a final point, any outreach campaign to be conducted will need to take into account the different situations of the Child Soldiers and the Victims of the Attacks. Lastly, in full

compliance with the do no harm principle adopted by the Trial Chamber, the outreach and identification of new beneficiaries will take place as close as possible to the inclusion into the programme. Proceeding differently would result in making contacts with potential beneficiaries at a point in time when no programmes are available, thereby (i) unduly increasing their expectations, (ii) causing unnecessary expenses; and (iii) requiring that contact is re-established at the time of implementing the programme.

346. In relation to the Defence's queries concerning the outreach messaging and the system to be put in place to contact potential beneficiaries,<sup>160</sup> the Trust Fund adds the following clarifications. First, Defence's concerns that improper outreach campaigns may lead to a number of so-called false victims presenting themselves is misconceived. As per standard practice, messages to be conveyed are agreed upon with the CLR's and the Country Office prior to their dissemination and this will also be the case in the *Ntaganda* case. Additionally, when individuals are identified, their narratives are listened to and checked against the criteria set by the Trial Chamber in the Reparations Order to avoid that certain individuals who are not victims are in a position to claim reparations. The standard of proof to be respected in this regard has been set by the Trial Chamber and is that of the balance of probabilities, that is that it is expected that their narrative is more probable than less probable.

347. The Defence appears to be concerned about the Trust Fund's potential inability to reach certain beneficiaries. This concern is founded: the implementation of the IDIP and of the *Lubanga* reparation show that it is a difficult task to contact victims, whether because they changed contact details since the first contact, or because they are currently displaced and therefore unable to be reached for reasons unknown to the Trust Fund. In this instance, the Trust Fund deploys all possible efforts, in consultation with the CLR's, to reach the individuals, including by resorting to the assistance of its implementing partners. In addition, the length of the intended programme also alleviates such concerns.

#### **b. Identification of potential beneficiaries and collection of information**

348. As noted by the CLR2 in his observations on the proposal, identification of potential beneficiaries (mapping) goes hand in hand with the outreach campaign and would often happen in a contemporaneous manner. In light of the very high number of beneficiaries expected to come forward, all actors involved in the outreach campaign, i.e. Registry and/or Trust Fund's local partners, civil society organisations and CLR's, if they so wish, (as well as possibly CLR's of the *Lubanga* case) should be in a position to make contact with potential beneficiaries to

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<sup>160</sup> Defence Additional Matter, ICC-01/04-02/06-2740-Conf, para 8(xiii) and 8(xiv).

inform them of where and how information for the purpose of eligibility is being collected. In addition, these actors should be in a position to explain the limitations of the reparation programme and, in general, the eligibility criteria, thereby managing the expectations of the victims. Relying on all actors' knowledge, whose involvement and access to the field dates back to over 10 years ago, will increase the victims' accessibility to the reparation programmes.

349. While the source of identification is of little relevance to the fairness of the process, it is however of critical importance that the relevant information is collected in a uniform way. In this regard, the Trust Fund has noted the CLR1 observations on the necessity to have a simple process that does provide nonetheless for guarantees as to the way the information is collected and as to its content. The CLR1 has also pointed out that the Trial Chamber should approve the method of collection of information as falling under its overall monitoring function.

350. In light of the very high number of Victims of the Attacks expected and of their locations, (inaccessible to the Court's staff, and any other international staff, for the past 18 months), the Registry's and/or Trust Fund's staff are in no position to collect the relevant information from all potential beneficiaries by themselves. It is equally not realistic or suitable to expect that victims be provided with forms to be filled out on their own. First, the circulation of application forms would create an unnecessary risk to individuals found in possession of such a document (e.g. in particular to former Child Soldiers).<sup>161</sup> Second, even if the forms were kept simple, a large number of beneficiaries would be unable to print the form and are not literate to fill it out. Third, circulating application forms broadly without any assistance being provided would inevitably lead to an unmanageable increase of expectations.

351. As a result of these difficulties, and in order for the reparation implementation to proceed, it is proposed that only the limited information necessary for the determination of the eligibility be collected by way of a simplified document to be agreed upon by all parties involved. Ideally, this information would be collected directly in an electronic format, but the form can also be filled out by hand. The form will be developed by the Trust Fund, in consultation with the parties, i.e. CLR1 and Defence, as well as with the Country Office and VPRS. The Trust Fund fully concurs with the observations made by the CLR1 that those involved in the collection of information must be fully trained to limit the need for repeated

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<sup>161</sup> In the *Al Mahdi* case, the application form did not contain any reference to the Court. Yet, it was kept confidential, not published on the website of the Court, and not circulated until September 2021, that is throughout the phase of collection of applications.

follow-up contacts with the potential beneficiary by the verification body and that, should this happen nevertheless and repeatedly, lessons are drawn and the process adjusted and improved.

352. Upon approval of the DIP by the Trial Chamber, it is for the Trust Fund to organise, plan and initiate the collection of information. Flexibility must be retained to adjust to the volatile circumstances prevailing in Ituri, to the very high number of victims located in inaccessible locations as well as to the ongoing movements of population, and the Trust Fund takes into account the comment made by the CLR2 that such information can partly be collected remotely by telephone by designated focal points.

353. The Trust Fund will work together with the Registry staff and with implementing partners and intermediaries of the CLRs and the Registry to collect the relevant information from potential beneficiaries:

- a. The Trust Fund will be acting together with Registry staff, insofar as they express availability, and pursuant to a pre-agreed process. The collection of such information before the start of the programme will, however, be the exception.
- b. Once they are procured, the Trust Fund will carry out this work of collecting information together with implementing partners. This ensures a harmonised approach to the identification, the use of the same forms and, insofar as possible, continuous review with a view to further simplifying the process.

354. To work with implementing partners to collect this information is in line with the [REDACTED].<sup>162</sup> This is also in line with the Trial Chamber's Decision on the First IDIP Report according to which, it is not "problematic that implementing partners would collect information from the potential beneficiaries" as long as the task of verification is not delegated to external sources.

355. In short, proceeding in this flexible way will permit the maximum number of victims to be provided with a fair opportunity to exercise their right to reparations. It also optimises the process in the sense that the Court's relevant capabilities and resources will be appropriately used.

### **C. Verification**

356. Upon identification of potential beneficiaries and collection of the relevant information, their eligibility must be verified. As set out above, verification is the process of assessing and deciding whether a victim belongs to the group of beneficiaries of a certain programme (IDIP or DIP).

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<sup>162</sup> [REDACTED].

357. The issue relevant to verification is, which bodies are in charge of verifying the information collected in the field and how many steps this verification process should have. By way of background, a brief summary of the approaches adopted in the *Lubanga* and *Al Mahdi* cases is provided below.

### 1. Background

358. In the *Lubanga* case, the verification has been (is being) carried out subsequently by three entities. The collected applications were transmitted from the CLR to VPRS (which included the information in its VAMS system); then from VPRS, together with a preliminary assessment as to the completeness of the applications and the age of the child soldiers, to the TFV; and finally, upon decision by the Board of Directors and notification thereof to the Chamber and VPRS, they were transmitted from VPRS to the Chamber, who carried out a final control of the decision by re-assessing the application forms, in particular as to the age of the child soldiers. Neither the TFV nor the Trial Chamber had access to the VAMS database, i.e. they carried out the assessment on the basis of the applications received.

359. In the *Al Mahdi* case, the applications and accompanying material (called “consolidated applications”) were transmitted by the LRV to VPRS, which scanned the application and gave it a VAMS registration number, then from VPRS to the TFV.<sup>163</sup> Only the negative TFV decisions were sent to the Trial Chamber who got access to the relevant application forms through VPRS. The TFV reported the details of the positive decisions to the Trial Chamber but did not submit the positive decisions to the Trial Chamber itself. Evidently, as the information is in VAMS, the Trial Chamber could ask for access to the forms at any time to VPRS. This process is different from that in *Lubanga* because VPRS does not carry out a preliminary assessment of forms and the Trial Chamber only reviews the negative decisions of the Trust Fund, but not all decisions, as in the case of *Lubanga*.

360. In short, the processes applicable to date are as follows:

- a. In the *Lubanga* case, verification has three steps:
  1. a preliminary assessment by VPRS
  2. a determination by the TFV Board of Directors
  3. a final determination of all applications by the Trial Chamber.
- b. A two-step verification was in place in *Al Mahdi* until September 2020:

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<sup>163</sup> Until 20 September 2020, the VPRS carried out preliminary examinations. However, as a result of the delays caused by this step and of the limited use thereof, on 20 September 2021, the Trial Chamber – upon a Trust Fund’s request – issued a decision reducing the role of VPRS to scanning and registering the applications.

1. a preliminary assessment by VPRS;
2. a determination by the TFV Board of Directors that was subject to judicial review (of negative decisions).

361. In Summer 2020, the Trust Fund conducted lessons learned to exercise identifying ways to speed up and streamline the process and submitted the result to the Trial Chamber VIII with a request to amend the process and relinquish the preliminary assessment by VPRS for the reason that the TFV was already involved in the collection of the relevant applications. On 20 September 2021, the Trial Chamber granted in full the Trust Fund's request. Since then, the assessment of an application takes a maximum of 15 days,<sup>164</sup> as opposed to 2.5 months previously. Thus, the verification process in *Al Mahdi* now unfolds as follows:

A one-step verification is in place in *Al Mahdi* since September 2020 (by reference to a strong identification process involving LRV and TFV staff), consisting of a determination by the TFV Board of Directors that is subject to judicial review (only of negative decisions).

362. Given the similarity between *Lubanga* and *Ntaganda*, and the fact that all *Lubanga* beneficiaries will automatically be *Ntaganda* beneficiaries, it may be the most obvious way forward to implement the same verification process for *Ntaganda* as for *Lubanga*, as also proposed by VPRS in early meetings. However, the verification process has been criticised for the appearance of duplication of work between Registry, Trust Fund and Chambers. In addition, the Chambers, in particular the Appeals Chamber, stipulated only in respect of individual reparation awards a need for a judicial involvement through judicial review. Furthermore, the *Ntaganda* Trial Chamber, as set out above, already provided direction in that the *Lubanga* model and the *Al Mahdi* model should not be applied in relation to the judicial review process. The Trial Chamber stated clearly that it does not intend to be involved in this process. Instead, the Trust Fund is requested to develop an administrative review process for victims who are found ineligible.

## 2. Consultations

363. During the consultations held with VPRS and CLR, <sup>165</sup> the CLR2 expressed a clear preference for not having a preliminary assessment, for labelling this process as administrative

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<sup>164</sup> Insofar as additional information is required, the LRV is asked to provide such information; the 15 days-time limit starts once the information has been received by the TFV.

<sup>165</sup> Minutes of the meeting held on 20 September 2021 between the TFV, the VPRS and the Country Office in the presence of the LRVs concerning the eligibility assessment in reparations in the *Ntaganda* case.

and not as judicial and for a neutral body to make the determination on eligibility, be it the Trust Fund or VPRS, as delegated by the Trust Fund.

364. VPRS expressed that it can carry out the preliminary assessment for all new applications in the case of *Ntaganda* and favoured the *Lubanga* approach as such. It did not necessarily favour making the final determinations on eligibility, but rather saw its role in the area of preliminary assessments.

365. A separate session was dedicated to the VAMS database, referred to above.

366. The notion of a separate verification body was raised with VPRS, i.e. a body consisting of TFV and VPRS staff, in charge of making the relevant determinations.

367. In its response to the Proposal, the Defence opposes the suggested process and recalls that a number of issues relevant for the determination of an appropriate eligibility mechanism are currently pending an appeal – an observation also made by the CLR2. As to the most appropriate eligibility mechanisms, both CLRs indicate that the option proposed according to which eligibility is determined as a result of a one-step verification process undertaken by the TFV is appropriate. The VPRS indicated, on the contrary, that they would be prepared to conduct the verification themselves (as opposed to the Trust Fund) in “as a speedy manner as possible, insofar as the Registry has availability of staff resources”. They indicated additionally, that should the option chose to be that of a one-step verification under the Trust Fund, their staffing level does not allow to assign staff members to work exclusively on the *Ntaganda* verification process. The Trust Fund will continue consulting with the parties and the Registry and will report to the Trial Chamber when the most efficient and fair mechanism has been agreed upon.

368. In relation to the Defence’s and CLR2 concerns<sup>166</sup> raised in relation to the screening process, the Trust Fund refers to the below paragraphs and adds the following clarifications. As to the appropriate body to conduct the verification, consultations are ongoing with the Registry. As to the application of the criteria and standard of proof, the Trust Fund will issue guidelines in due course. In any event, the Trust Fund directs the Defence to the Court's case-law, particularly the *Lubanga* case, regarding the application of the balance of probabilities test and the verification of the applicants' identities.<sup>167</sup>

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<sup>166</sup> CLR2 Request for Supplementary Information, ICC-01/04-02/06-2737-Conf, para. 28(viii); Defence Additional Matter, ICC-01/04-02/06-2740-Conf, pars 8(xv) to 8(xix).

<sup>167</sup> [Lubanga Appeal Judgment Principles](#), paras 57 and 65.

### 3. Proposal for the verification process

369. The proposal below addresses the three critical areas relevant to the verification process: (i) the verification body; (ii) the review process; and (iii) the transfer of information to and from the verification body. The respective roles of the CLRs, the Defence and of the Chamber are addressed in relation to these three areas.

#### a. Verification body

370. As set out above, verification requires an assessment of whether a given victim fulfils the eligibility criteria of the Reparations Order and whether it fulfils any additional requirements relevant to the IDIP or DIP programme (such as the urgency screening for the IDIP). The verification body must make a **determination of all these criteria** based on the information collected as a result of the identification process.

371. The verification body must be in a position to make a determination **within a short period of time, ideally within 15 days** of receipt of the forms (at the verification body). This ensures that the determination will be made close in time to the moment when the information has been collected, as required by the Trial Chamber and the do no harm principle. The time frame of 15 days is applied in the *Al Mahdi* case, counting the days between the Trust Fund's receipt of application forms and the determination by the Board of Directors.

372. A further consideration is that the verification body will, in practice, sometimes require **additional information from the victims** in the field, as the material submitted may not be complete or raise questions requiring such additional information.<sup>168</sup> Therefore, as part of the verification process, the relevant body must be able to contact the victims.

373. The Trial Chamber has fully delegated the eligibility assessment to the Trust Fund and has not accepted that the Trust Fund could delegate this responsibility to an *external* body. The Trial Chamber also accepted in the Decision on the First IDIP Report that the Trust Fund is the body making the determinations on eligibility. Accordingly, the starting point for any consideration is that the Trust Fund is the verification body.

374. At the same time, the Trial Chamber also reiterated "its view that the TFV should consider whether the administrative eligibility assessment and urgency screening could be carried out by the Registry in whole or in part".<sup>169</sup> Accordingly, the Trust Fund is requested to

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<sup>168</sup> In that way, the quality of the information collected by e.g. the implementing partners is directly under scrutiny and further training needs and guidance can be provided to improve the collection process.

<sup>169</sup> Decision on the IDIP, para. 38.

consider whether it could delegate this function to VPRS (which is the relevant section within the Registry), or involve VPRS in any way in this process.

375. Taking all these considerations and precedents into account, and after consideration of the opinions expressed by the parties and VPRS, the option of carrying out a preliminary assessment first by VPRS followed by verification by TFV has been excluded as being not expeditious and also resource-intensive. VPRS agreed with this notion in light of expedient proceedings.

376. Accordingly, the following **options** remained for the verification process:

Option 1: a one-step verification process, i.e. one verification body only: Full delegation by TFV of the verification to VPRS.

Option 2: a one-step verification process, i.e. one verification body only: Verification by the TFV.

377. Option 2 is the default option, as the responsibility for the verification process lies in its origin with the TFV. Taking into account the guidance given by the Trial Chamber to the Registry to provide assistance to the TFV, the TFV considered that it could, in any case continue to rely on the Registry's ability to assist,<sup>170</sup> at a minimum in times of foreseeable workload peaks.

378. At a meeting held on 1 February 2022, Registry/VPRS and TFV discussed whether and in how far it would be possible only for VPRS with its current resources to conduct the full verification process. In the discussion, taking into account the timelines and the need to closely interact with the implementing partners, it became clear that this would not be possible. The Registry as such (not limited to VPRS) expressed, however, its willingness to cooperate with the TFV to address this matter, having made aware of the time and resources that will foreseeably be necessary to conduct this process successfully and expeditiously – not only for the current case but also for future cases. It was accordingly agreed that TFV sets out the process in detail and its requirements to allow the Registry to consider whether and how to provide support. Pending the outcome of this process, which may well take some time, in particular if budgetary processes are involved, the TFV will remain in charge of the verification process. Accordingly, keeping in mind that this process is ongoing, and pending its outcome, the TFV will remain the relevant verification body.

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<sup>170</sup> Reparations Order, [ICC-01-04-02/06-2659](#), paras. 105, 140 and 253.

379. In that regard, the verification will be carried out by a verification team within the Trust Fund, supervised by the Legal Adviser, which will be in charge of the determinations on eligibility within a timeframe of 15 days from receipt of the forms.

**b. Review process**

380. Within administrative processes, there is usually a right of review if the relevant person is adversely affected by the administrative determination.

381. The Trial Chamber set out that it does not intend to have a judicial review role in this process.<sup>171</sup> The Trust Fund considers that it is solely within the realm of the Trial Chamber to decide about its role in this process. Should the Trial Chamber retain this position, the Trust Fund will, at any time, consult the Chamber should issues arise as to the eligibility criteria set by the Trial Chamber in the Reparations Order. As provided for in regulation 57 of the Regulations of the Trust Fund, it will seek guidance, if such an issue is relevant to the merits of the case. This will allow the involvement of the parties, including the defence, to address any issue relevant to the Reparations Order. In this respect, the CLR's may also raise such issues in the requests for administrative review addressed to the Trust Fund with a view of moving the Trust Fund to bring such matters before the Trial Chamber.

382. Independent thereof, there is a need for an administrative review process. Such a process should allow for the involvement of the CLR's in favour of specific victims, who otherwise primarily represent the interests of victims in general terms, as determined by the Trial Chamber. In that respect, the below two processes (depending on the option chosen above) are proposed:

383. Pending the outcome of the above-mentioned process, the following administrative review process is proposed:

- a. When a potential beneficiary is found ineligible, the Trust Fund will notify him or her directly as well as the relevant legal representative representing the interests of this group (CLR1 or CLR2, as appropriate), and explain to the victim his or her rights. The victim and the relevant CLR will be provided with the reason for the determination and have 30 days to provide supplementary documents, information or clarification to the Trust Fund. This deadline can be extended when circumstances so require.

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<sup>171</sup> Decision on TFV's first progress report, para 17.

- b. The Trust Fund will review the determination based on the information received from the relevant CLR and/or victim within a period of 15 days of receipt of the request for reconsideration/review. If the determination is likely to be upheld, guidance from the Board's focal point for this case can be sought.
- c. Should the Trust Fund consider it appropriate to refer an underlying issue to the Trial Chamber for guidance, the relevant deadlines will be extended accordingly and the relevant CLR and victim will be informed.

#### **4. Transmission of information**

384. Information needs to be transmitted (1) from the identification body to the verification body and (2) from the verification body to the victim and the relevant stakeholders.

##### **c. Background**

385. In the other reparation cases, new applications in all reparation cases were submitted by the relevant CLRs to VPRS for them to include the information contained in the application forms into VAMS. CLRs will no longer, however, have any role in the collection of this information, as determined by the Trial Chamber.

386. All application forms for individual reparations in *Al Mahdi* and *Katanga* and the application forms for collective reparations in *Lubanga* and *Katanga* are held by the VPRS and the information is included in VAMS. These forms and any relevant information is therefore in principle accessible to the relevant Trial Chamber. The information about the concrete beneficiaries for the collective award (for the community of Timbuktu) in the case of *Al Mahdi* is not contained in VAMS.

387. Furthermore, in the case of *Al Mahdi*, the Board of Directors' decisions were transferred to the LRV and VPRS and in redacted form to the Defence. The Trust Fund transmitted to the *Al Mahdi* Trial Chamber only the negative decisions. In the case of *Lubanga*, the determination was submitted to the Chamber, VPRS and the LRV, but not to the Defence. In that case, the Chamber also received the application forms from VPRS.

##### **d. Transfer of the determinations to the Chamber, Defence, CLRs and VPRS**

388. In the *Ntaganda* case, the collection of information for the purpose of collective reparations takes place outside of a judicial process; it is an administrative process, which is part of the implementation of reparations. The potential beneficiaries do not fill in application forms, but the relevant information is collected in simplified forms (electronically or on paper, see above). Accordingly, insofar as the Trial Chamber retains the position that it does not review the final determinations of the Trust Fund, there is no need to submit lists of final

positive or negative eligibility determinations to the Trial Chamber. The Trial Chamber also does not need to be in the position to have access to the forms or to any identifying information of the victims. Accordingly, the main function of VPRS and its database VAMS – to hold information for the Chamber – is apparently not required in the case of *Ntaganda*. Instead, the Trial Chamber is informed about the eligibility process by means of the Trust Fund’s update reports.

389. Given that the Defence does not have a role in this process, the primary source of information for the Defence will be the update reports of the Trust Fund.

390. The Trust Fund notes that the CLR’s have two roles – on the one hand they represent the clients they have represented in the judicial proceedings as common legal representatives, on the other hand, they represent the interests of victims in general. This would lead to the below configuration in terms of eligibility, to which the CLR’s seem to have agreed in their communication to the Trust Fund of November 2021:

391. The CLR’s continue to represent the clients they have represented in the judicial proceedings. Accordingly, the Trust Fund will necessarily inform the CLR’s of all positive determinations relevant to their clients.

392. Beyond representing their clients, the CLR’s have a specific role in the eligibility process only in case of negative eligibility determinations, as they are otherwise representing generally the interests of the victims. Accordingly, the Trust Fund will not transfer the specific determinations (lists with personal data of beneficiaries) to the CLR’s but can provide personal data only upon request and/or in the cases to which the potential beneficiaries agreed when CLR’s their information to the Trust Fund. Apart from that, the Trust Fund will provide the CLR’s with information about the eligibility process in the update reports of the Trust Fund and at any meetings with the CLR’s, as required. The Trust Fund has noted the CLR1 observations on their need to access the VAMS Database.

393. In case VPRS is the verification body or in charge of the preliminary assessment, the Trust Fund will also inform VPRS of any final determinations it makes during the review process. If VPRS is not involved in this process, there is no objective need to share personal data about the victims with VPRS.

394. The Trust Fund would like to draw the attention of the Trial Chamber to two separate points that may require separate submissions by all (including the Trust Fund) before the Trial Chamber. First, the above-described CLR’s representation system may create two classes of victims (those who are clients and those whose interests are represented generally). It may therefore be necessary to receive more guidance from the Trial Chamber on this point, e.g. in

line with the guidance provided by the *Al Mahdi* Trial Chamber.<sup>172</sup> The Trust Fund is prepared to make observations on this point separately upon invitation of the Trial Chamber, or in response to the submissions of the Defence, CLR's and legal representatives.

395. In addition, as also requested by the legal representatives in the *Lubanga* case at a meeting in late 2021, it may be necessary to hear them, in particular in respect of their role during the reparations implementation phase, given also the role of CLR1 and the fact that the beneficiaries of the Former Child Soldiers Programme would be represented by four groups of common legal representatives. The Trust Fund is prepared to make observations on this issue separately upon invitation of the Trial Chamber or in response to the submissions of the Defence, CLR's and legal representatives. In this context, the Trial Chamber may also consider hearing the Defence of Mr Lubanga.

**e. Transfer of information to the verification body**

396. In the other reparations cases, the application forms were always transmitted to VPRS, the relevant information included in VAMS and then – with or without preliminary assessment – transferred to the TFV. As explained above, this was required because the Chamber retained control over the eligibility determinations. In this case, however, the personal data collected about potential beneficiaries is collected by the Trust Fund for the purposes of the reparation programme. Accordingly, there is no requirement to transfer this information to VPRS or to include this information into VAMS.

397. As set out above, the TFV is in the process of determining the best way forward in terms of a database, including in relation to the VAMS database and how it can be used by the TFV's implementing partners and the TFV itself, under the control of the TFV.

398. The TFV is prepared to consider using the VAMS database for the interim period until a proper database solution has been designed (which could ultimately be the VAMS database). In particular, the TFV would value [REDACTED]. However, before the VAMS database can be used, [REDACTED].

**5. Deceased victims and beneficiaries**

399. Considering the potential number of victims, the Trust Fund does not consider it viable that a resumption of action is introduced before the Trial Chamber each time a (potential) beneficiary is deceased. The Trust Fund suggests that, while applying the relevant legal

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<sup>172</sup>

framework,<sup>173</sup> succession is handled through the analysis of the documentation required to show that a person has died and who in his or her family is the successor (one person). In the interest of judicial economy and efficiency, such documentation should be provided to the Trust Fund and CLRs, as applicable, to accept the proposed succession. The Trust Fund will keep a register of such occurrences.

#### **D. Summary and short outline of the process:**

400. In sum, the TFV will still continue its consideration with the Registry how best to address in terms of resources the verification process. Pending the outcome of this consultation, the Trust Fund will act as the verification body. Information and additional information about potential beneficiaries will be collected primarily by the implementing partners but can also be collected by TFV or Registry staff, under the guidance of the TFV, in the field.

401. For the Victims of the Two Attacks Programme, the following steps will be essential to the eligibility process:

- a. The Trust Fund will determine the eligibility of all participating victims based on their application forms over the coming year, insofar as they have been positively assessed by VPRS in early 2021; this is a verification based on the files only;
- b. Once the implementing partner starts its work, the Trust Fund will inform the relevant beneficiaries and CLR2 through the implementing partner that they have been found eligible and their intake can start;
- c. For those participating victims that have been negatively assessed by VPRS and for those where the Trust Fund considers additional information is required based on the files, the Trust Fund will wait for the implementing partner to be installed and trained and then request the implementing partner to contact those potential beneficiaries for additional details, after developing the relevant forms and questionnaires; the Trust Fund will closely accompany this process;
- d. The Trust Fund will conduct the verification process of these beneficiaries and for negative determinations, the above-described review process will apply;
- e. An outreach campaign, as described above, will start as soon as the implementing partner starts its work to ensure that new beneficiaries come forward;

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<sup>173</sup> See, for instance, *Prosecutor v. Germain Katanga*, Decision on the Application for Resumption of Action brought by family members of deceased Victim a/0217/09, 18 November 2021, [ICC-01/04-01/07-3892](#), para. 5.

- f. The implementing partner will collect the relevant information from newly identified victims and the TFV will conduct the verification process on a rolling basis throughout the duration of the programme;
- g. An outreach, identification and information collection campaign will also be conducted in Uganda in the areas of the refugee camps to allow their inclusion in the programme (lump sum *in lieu*);
- h. Insofar as not yet evident from the eligibility process (as e.g. for children born out of rape and sexual slavery), the TFV will put in place a process with the implementing partner that ensures that Victims of the Attacks who have been subject to rape or sexual slavery can come forward in a safe space to receive the symbolic financial support.

402. For the Former Child Soldiers Programme the following steps will be essential to the eligibility process (keeping in mind that all *Lubanga* beneficiaries are also *Ntaganda* beneficiaries):

- a. Upon approval of the DIP, all *Lubanga* beneficiaries will be considered recognised also as *Ntaganda* beneficiaries; the Trust Fund will consider with the CLR1 and the *Lubanga* representatives whether and how to inform the beneficiaries (see also in this context *supra* para. 395);
- b. The Trust Fund will determine the eligibility of all victims participating in *Ntaganda* based on their application forms as soon as possible after the approval of the DIP and upon receipt of the relevant files and forms from VPRS; this is a verification based on the files only;
- c. The Trust Fund will inform the relevant beneficiaries and CLR1 through the implementing partner that they have been found eligible and their intake with the implementing partner can start;
- d. Should additional information be required from those potential beneficiaries, the Trust Fund will liaise with them, in close contact with CLR1, to receive such information; the implementing partner may potentially be involved in this process;
- e. The Trust Fund will request the legal representatives in *Lubanga* to submit to the Trust Fund all information about identified beneficiaries and the Trust Fund will proceed to their verification; positive determinations will be referred on a rolling basis to the implementing partner for intake; in case more information is required, the Trust Fund will liaise with the relevant victims to receive such information;

- f. A process will be put in place, together with the implementing partner, latest from the third contractual year with this partner (as identification is currently not part of the partner's contractual scope), in order to identify and collect the relevant information from new potential beneficiaries; the eligibility process will gradually evolve throughout the life-cycle of the project.
- g. Insofar as not yet evident from the eligibility process (as e.g. for children born out of rape and sexual slavery), the TFV will put in place a process with the implementing partner that ensures that Former Child Soldiers who have been subject to rape or sexual slavery can come forward in a safe space to receive the symbolic financial support. In that regard, it may be necessary to first adjust the contract with the implementing partner before the partner can provide the relevant financial support (e.g. latest by the third contractual year).

403. Beneficiaries of the IDIP programme will automatically be included in the relevant DIP programme, as set out in this DIP.

404. Even though the process has been set out in some detail, adjustments to this proposed system may certainly be necessary over time, and the Trust Fund will address the Trial Chamber with any such proposed adjustments for approval in its Update Reports.

## ATTACHMENT 1 – CONTEXTUAL INFORMATION

### E. Political structure of the DRC

1. The Democratic Republic of the Congo is the largest country in Sub-Saharan Africa, with a surface area equivalent to that of Western Europe.<sup>174</sup>
2. The Constitution of 18 February 2006,<sup>175</sup> in its articles 3 paragraph 3, 123 point 1, 202 and 204, enshrines the principles of the free administration and autonomy of the provinces and decentralized territorial entities in the management of their resources.<sup>176</sup> Furthermore, the organization and functioning of the public services of the central power, of the provinces and the decentralized territorial entities are established by an organic law, in accordance with article 194 of the Constitution of the DRC,<sup>177</sup> and more specifically by Organic Law n°16/001 of 3 May 2016 establishing the organization and functioning of public services of the central power, provinces and decentralized territorial entities.<sup>178</sup>
3. In general terms, the DRC is divided into administrative units known as “provinces”, “districts”, “*territoires*”, “*collectivités*”, “*groupements*” and “*localités*”.<sup>179</sup>
4. Ituri is one of the 21 provinces of the DRC and is located in the north-east of the country, bordering Uganda, with population estimates ranging from 3.5 to 5.5 million people.<sup>180</sup> Ituri itself is made up of five sub-provincial administrative entities called “*territoires*”, namely Aru, Mahagi, Djugu, Irumu and Mambasa. All in all, the five *territoires* are composed of 45 sub-*territoire* entities which are called “*collectivités*”. Among those, some are customarily managed, which is the case of “*chefferies*”, while others are state-administered, and are called “*secteurs*”. Moreover, each *chefferie* or *secteur* contains a sub-category of

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<sup>174</sup> World Bank, Overview of the Democratic Republic of Congo, last updated on 2 April 2021, accessible at <https://www.worldbank.org/en/country/drc/overview#1>

<sup>175</sup> Democratic Republic of Congo, Organic Law n°16/001 of 3 May 2016 establishing the organization and functioning of public services of the central power, provinces and decentralized territorial entities.

<sup>176</sup> Official website of the Ministry of Environment and Sustainable Development, last updated on 17 December 2021, accessible at <https://medd.gouv.cd/loi-organique-fixant-lorganisation-et-le-fonctionnement-des-services-publics-du-pouvoir-central-des-provinces-et-des-entites-territoriales-decentralisees/>

<sup>177</sup> *Ibid.*

<sup>178</sup> Democratic Republic of Congo, Organic Law n°16/001 of 03 May 2016 establishing the organization and functioning of public services of the Central Power, provinces and decentralized territorial entities.

<sup>179</sup> See, e.g., *Prosecutor v. Germain Katanga*, Judgment pursuant to Article 74 of the Statute, 7 March 2014, [ICC-01/04-01/07-3436](#), para. 2.

<sup>180</sup> See, e.g. *Ntaganda* Judgment, para. 2, and the references contained therein.

administrative entities, which are referred to as “*groupements*”.<sup>181</sup> Finally, the smallest administrative units are called “*localités*”.

## F. Humanitarian context and level of human development in the DRC

5. Decades of armed conflict, which is still ongoing, with around 120 armed groups being still active in eastern Congo,<sup>182</sup> brought about a very low level of development,<sup>183</sup> an alarming humanitarian situation, with around 5.5 million people internally displaced<sup>184</sup> and 930,000 Congolese nationals registered as refugees and asylum seekers in at least 20 countries as of November 2020,<sup>185</sup> and with nearly a quarter of the population in severe food insecurity.<sup>186</sup> In addition to this, the armed conflict has also brought about very poor health conditions, which are not only associated with physical health, but also with the constant trauma of violence that comes along.<sup>187</sup>

6. In 2019, life expectancy at birth in the DRC was 60.7.<sup>188</sup> In 2018, respectively 225 and 274 out of 1,000 15-year-old women and men were statistically likely to die before reaching the age of 60, which is roughly one person out of four, making the mortality rate in the DRC alarmingly high.<sup>189</sup> In the period between 2010 and 2019, 42.7% of children under 5 were suffering from malnutrition.<sup>190</sup> Concerning communicable disease, 0.8% of the population aged between 15 and 49 was living with HIV as of 2018.<sup>191</sup> Yet, in 2017, only the equivalent

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<sup>181</sup> Amir Sungura, Bernard van Soest, Limbo Kitonga, Reigniting Ituri? Towards a reading of the 2018 Djugu violence, Consortium for the Integrated Stabilization and Peace of Eastern DRC, p. 7, accessible at <https://paxforpeace.nl/media/download/pax-report-reigniting-ituri.pdf>

<sup>182</sup> Human Rights Watch, Democratic Republic of Congo, accessible at <https://www.hrw.org/africa/democratic-republic-congo>

<sup>183</sup> WHO, Health Clusters in Countries, Democratic Republic of the Congo, accessible at <https://www.who.int/health-cluster/countries/democratic-republic-of-the-congo/en/>

<sup>184</sup> Human Rights Watch, Democratic Republic of Congo, Events of 2020, accessible at <https://www.hrw.org/world-report/2021/country-chapters/democratic-republic-congo>

<sup>185</sup> Human Rights Watch, Democratic Republic of Congo, Events of 2020, accessible at <https://www.hrw.org/world-report/2021/country-chapters/democratic-republic-congo>

<sup>186</sup> Human Rights Watch, Democratic Republic of Congo, accessible at <https://www.hrw.org/africa/democratic-republic-congo>

<sup>187</sup> WHO, Health Clusters in Countries, Democratic Republic of the Congo, accessible at <https://www.who.int/health-cluster/countries/democratic-republic-of-the-congo/en/>

<sup>188</sup> UNDESA (2019a), World Population Prospects: The 2019 Revision, Rev 1, New York, accessible at <https://population.un.org/wpp/>

<sup>189</sup> World Bank (2020a), World Development Indicators Database, Washington, DC, accessible at <http://data.worldbank.org>

<sup>190</sup> UNICEF (United Nations Children's Fund), WHO (World Health Organization) and World Bank (2020), Joint Child Malnutrition Estimates Expanded Database: Stunting, July 2020 edition, New York, accessible at <https://data.unicef.org/topic/nutrition/malnutrition/>

<sup>191</sup> World Bank (2020a), World Development Indicators Database, Washington, DC, accessible at <http://data.worldbank.org>

of 4% of the DRC's gross domestic product ("GDP") was spent on healthcare goods and services.<sup>192</sup>

7. The level of education is equally concerning, with children being expected to receive only 9.7 years of schooling as of 2019.<sup>193</sup> Moreover, in 2019, only 50.7% of the population aged 25 and older had reached but not necessarily completed a secondary level of education, and only 36.7% out of the total of 100% were women.<sup>194</sup>

8. During the period from 2008 to 2018, 54.7% of students dropped out of school before reaching the last grade of primary education, a very high number when compared to 35.6% in Nigeria, 39.7% in Senegal or 24.8% in Sudan, with only seven countries, i.e., Sierra Leone, Chad, Angola, Uganda, Cameroon, Liberia and Burundi having higher numbers of respectively 75.8%, 71.4%, 68.1%, 64.5%, 62.0%, 61.8% and 56.2%.<sup>195</sup>

9. During the period from 2013 to 2018, only 1.5% of the equivalent of the DRC's GDP was spent on education by the government.<sup>196</sup>

10. In 2019, the DRC had a gross national income per capita of 1063<sup>197</sup> and a GDP per capita of 1098,<sup>198</sup> of which 907 applies to women and 1218 to men.<sup>199</sup>

11. The DRC has currently the third-largest population of poor globally, with the level of poverty being high, widespread and pervasive, a level that is also increasing due to impacts from COVID-19.<sup>200</sup> For the period from 2009 to 2020, it was estimated that 77.2% of the Congolese population, equating 60 million people,<sup>201</sup> lived below the international poverty line of 1.90 US dollars a day.<sup>202</sup> About one out of six living in extreme poverty in Sub-Saharan

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<sup>192</sup> World Bank (2020a), World Development Indicators Database, Washington, DC, accessible at <http://data.worldbank.org>

<sup>193</sup> UNESCO Institute for Statistics (2020), ICF Macro Demographic and Health Surveys, UNICEF Multiple Indicator Cluster Surveys and OECD (2019b).

<sup>194</sup> UNESCO Institute for Statistics (2020) and Barro and Lee (2018).

<sup>195</sup> UNESCO (United Nations Educational, Scientific and Cultural Organization) Institute for Statistics (2020), Data Centre, accessible at <http://data.uis.unesco.org>.

<sup>196</sup> World Bank (2020a), World Development Indicators Database, Washington, DC, accessible at <http://data.worldbank.org>

<sup>197</sup> World Bank (2020a), IMF (2020) and United Nations Statistics Division (2020b).

<sup>198</sup> World Bank (2020a), World Development Indicators Database, Washington, DC, accessible at <http://data.worldbank.org>

<sup>199</sup> HDRO calculations based on ILO (2020), UNDESA (2019a), World Bank (2020a), United Nations Statistics Division (2020b) and IMF (2020).

<sup>200</sup> World Bank, Overview of the Democratic Republic of Congo, Last Updated on 2 April 2021, accessible at <https://www.worldbank.org/en/country/drc/overview#1>

<sup>201</sup> Concerning the total population of the DRC, see UNDESA (2019a), World Population Prospects: The 2019 Revision, Rev 1, New York, accessible at <https://population.un.org/wpp/>

<sup>202</sup> World Bank (2020a), World Development Indicators Database, Washington, DC, accessible at <http://data.worldbank.org>

Africa live in the DRC.<sup>203</sup> For the same period of time, it was estimated that 64.5% of the Congolese population lived in multidimensional poverty and 36.8% in severe multidimensional poverty.<sup>204</sup>

12. Prior to the pandemic, net inflows of foreign direct investment to the DRC were estimated to amount to the equivalent of 2.7% of the GDP,<sup>205</sup> and the private capital flows, which are made up of net foreign direct investment and portfolio investment had the negative figure of -2.7% of the GDP, both figures being in relation to the period from 2011 to 2019.<sup>206</sup> Finally, for the period from 2010 to 2018, the net official development assistance received by the DRC amounted to the equivalent of 5.5% of its gross national income.<sup>207</sup> Yet, the DRC's economic growth decelerated from its pre-COVID level of 4.4% in 2019, to an estimated 0.8% in 2020 and the current account deficit widened to 4.0% of GDP in 2020.<sup>208</sup>

13. As noted in the United Nations High Commissioner for Refugees (“UNHCR”) Regional Refugee Response Plan for 2021 for the DRC, the DRC is “*one of the most complex and long-standing humanitarian crises in Africa.*” It is estimated that there were 998,510 refugees and asylum seekers who had fled the DRC as of 30 November 2021<sup>209</sup> due to “*ongoing conflicts in eastern DRC, as well as intercommunal violence*”, which continue to cause forced displacement both within the DRC itself, thereby resulting in internally displaced populations, as well as into neighbouring countries, thereby resulting in refugees. This situation is expected to deteriorate in the near future due to recent conflict escalations and the refugees and asylum-seekers who have already fled will continue to require ongoing support.<sup>210</sup>

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<sup>203</sup> World Bank, Overview of the Democratic Republic of Congo, Last Updated on 2 April 2021, accessible at <https://www.worldbank.org/en/country/drc/overview#1>

<sup>204</sup> HDRO and OPHI calculations based on data on household deprivations in health, education, and standard of living from various surveys listed in column 1 using the methodology described in Technical note 5 ([http://hdr.undp.org/sites/default/files/mpi2021\\_technical\\_notes.pdf](http://hdr.undp.org/sites/default/files/mpi2021_technical_notes.pdf))

<sup>205</sup> World Bank (2020a), World Development Indicators Database, Washington, DC, accessible at <http://data.worldbank.org>

<sup>206</sup> HDRO calculations based on data from World Bank (2020a). World Development Indicators database. Washington, DC, accessible at <http://data.worldbank.org>

<sup>207</sup> World Bank (2020a), World Development Indicators Database, Washington, DC, accessible at <http://data.worldbank.org>

<sup>208</sup> World Bank, Overview of the Democratic Republic of Congo, Last Updated on 2 April 2021, accessible at <https://www.worldbank.org/en/country/drc/overview#1>

<sup>209</sup> UNHCR, Operational Data Portal, Refugee Situations, Last Updated on 30 November 2021, accessible at <https://data2.unhcr.org/en/situations/drc>

<sup>210</sup> UNHCR Regional Bureau for Southern Africa, The Democratic Republic of the Congo, Regional Refugee Response Plan, January-December 2021, 31 December 2020, accessible at <https://data2.unhcr.org/en/documents/download/86008>, p. 4.

14. The UNHCR Regional Refugee Response Plan for 2021 was targeting a total of 1,108,420 refugees, and a host population of 842,960, involving the required amount of 585 million US dollars, with 66 partners being involved.<sup>211</sup>

15. Increased violence in the country has also resulted, since 2019, in the continued *internal* forced displacement of between 5.2 and 5.5 million people, according to respectively UNOCHA 2021 DRC Humanitarian Response Plan,<sup>212</sup> and a report updated on an ongoing basis based on data provided by EHTools, the International Organisation for Migration (“IOM”) DTM, and humanitarian partners, among which 3.22 million are children,<sup>213</sup> making it the second country with the highest number of internally displaced persons after Syria.<sup>214</sup> This includes approximately 2.9 million people displaced in 2020 mainly in the eastern part of the country (predominantly in Ituri, North and South Kivu and Tanganyika).<sup>215</sup> The DRC itself hosts about half a million refugees who have fled unrest and persecution in neighbouring countries.<sup>216</sup>

16. According to the UNHCR, “[t]his is the largest IDP situation in Africa and one of the most acute and longstanding humanitarian crises in the world”. Furthermore, it is also a *rapidly* evolving humanitarian crisis since the situation changes daily as populations continue

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<sup>211</sup> UNHCR Regional Bureau for Southern Africa, The Democratic Republic of the Congo, Regional Refugee Response Plan, January-December 2021, 31 December 2020, accessible at <https://data2.unhcr.org/en/documents/download/86008>, p. 5.

<sup>212</sup> UNOCHA, *Plan de réponse humanitaire, République démocratique du Congo*, January 2021, accessible at [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/hrp\\_2021-vf\\_28\\_janvier\\_web\\_ok-links1.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/hrp_2021-vf_28_janvier_web_ok-links1.pdf)

<sup>213</sup> UNOCHA, *République démocratique du Congo, Personnes déplacées internes et retournées*, report last updated on the 15 December 2021 based on data provided by EHTools, IOM DTM and humanitarian partners, collected by evaluations and validated by the *Commissions de Mouvements des Populations* of these provinces within the last 24 months for internally displaced persons and 18 months for the persons who returned to their domiciles, accessible at <https://app.powerbi.com/view?r=eyJrIjoiMDYwMDk3Y2UtNzRkNy00MTMxLTljYmMtMTJkZjBmYzAwNzlhliwidCI6IjBmOWUzNWRiLTU0NGYtNGY2MCIiZGNjLTVIYTQxNmU2ZGM3MCIiImMiOjhh9>

<sup>214</sup> UNOCHA, *Plan de réponse humanitaire, République démocratique du Congo*, January 2021, accessible at [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/hrp\\_2021-vf\\_28\\_janvier\\_web\\_ok-links1.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/hrp_2021-vf_28_janvier_web_ok-links1.pdf)

<sup>215</sup> UNHCR Regional Bureau for Southern Africa, The Democratic Republic of the Congo, Regional Refugee Response Plan, January-December 2021, 31 December 2020, accessible at <https://data2.unhcr.org/en/documents/download/86008>, p. 6.

<sup>216</sup> UNHCR Regional Bureau for Southern Africa, The Democratic Republic of the Congo, Regional Refugee Response Plan, January-December 2021, 31 December 2020, accessible at <https://data2.unhcr.org/en/documents/download/86008>, p. 6.

to move as a result of regular attacks,<sup>217</sup> and has also been aggravated by the COVID-19 pandemic, successive outbreaks of the Ebola Virus Disease and a recent measles outbreak.<sup>218</sup>

## G. International involvement in Ituri

17. The dire humanitarian situation in the DRC made the involvement of an important number of international non-governmental organisations necessary during the last decades. In terms of the most recent numbers, according to the UNOCHA, in September 2021, 289 operational partners, among which 73% were local NGOs, were carrying out 609 humanitarian projects in the DRC aiming to serve 6.2 million vulnerable people, among whom 58.5% were children under the age of 18.<sup>219</sup> Among those organisations, 48 were active in Ituri as of September 2021, 105 in North-Kivu and 73 in South-Kivu.<sup>220</sup> During the same period of time, 11 organisations were providing housing assistance, 19 were providing drinkable water and assisting with water sanitisation, 22 were providing education support, 51 were providing help concerning nutrition, 140 were providing protection, 58 were assisting with the provision of medical support and 90 were helping to provide food security.<sup>221</sup>

18. The worsening local humanitarian situation, coupled with increased security risks both to personnel and assets of humanitarian agencies, made it necessary to establish a set of guiding principles for the delivery of humanitarian assistance, which are addressed both to the international humanitarian community and to political and military authorities,<sup>222</sup> and which go hand-in-hand with the principles stated in the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief.<sup>223</sup> The general overarching

<sup>217</sup> Danish Refugee Council East Africa and Great Lake, [Democratic Republic of Congo Profile](#), October 2020, p. 1.

<sup>218</sup> UNHCR Regional Bureau for Southern Africa, The Democratic Republic of the Congo, Regional Refugee Response Plan, January-December 2021, 31 December 2020, accessible at <https://data2.unhcr.org/en/documents/download/86008>, p. 6.

<sup>219</sup> United Nations Office for the Coordination of Humanitarian Affairs, Operational Presence – 3W Report, 21 September 2021, p. 1, accessible at [https://reliefweb.int/sites/reliefweb.int/files/resources/20211021\\_3w\\_national\\_v00\\_published.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/20211021_3w_national_v00_published.pdf)

<sup>220</sup> United Nations Office for the Coordination of Humanitarian Affairs, Operational Presence – 3W Report, 21 September 2021, p. 3, accessible at [https://reliefweb.int/sites/reliefweb.int/files/resources/20211021\\_3w\\_national\\_v00\\_published.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/20211021_3w_national_v00_published.pdf)

<sup>221</sup> United Nations Office for the Coordination of Humanitarian Affairs, Operational Presence – 3W Report, 21 September 2021, p. 2, accessible at [https://reliefweb.int/sites/reliefweb.int/files/resources/20211021\\_3w\\_national\\_v00\\_published.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/20211021_3w_national_v00_published.pdf)

<sup>222</sup> United Nations Office for the Coordination of Humanitarian Affairs, Principles of engagement for emergency humanitarian assistance in the Democratic Republic of Congo, 25 January 1999, accessible at <https://reliefweb.int/report/democratic-republic-congo/principles-engagement-emergency-humanitarian-assistance-democratic>

<sup>223</sup> Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, 7/9/98, p.2, accessible at <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-1067.pdf>

principles are those of impartiality, neutrality, independence, human rights, participation, coordination, transparency and accountability. Additionally, some general protocols also add to the former principles of freedom of access, security, escorts, joint assessments and types of intervention and monitoring and evaluation.<sup>224</sup>

19. Furthermore, international NGOs active in the DRC are also guided by the UN Sustainable Development Goals,<sup>225</sup> in particular goal 1, ‘no poverty’, goal 4, ‘quality education’, goal 5, ‘gender equality’, goal 8, ‘decent work and economic growth’ and goal 16 ‘peace, justice and strong institutions’.<sup>226</sup>

20. The OCHA DRC Humanitarian Response Plan for 2021<sup>227</sup> indicates that, as of 30 November 2021, the required funds as part of the said plan were as high as 1.98 billion US dollars, while only 742.1 million US dollars had been received. It should be however mentioned that an additional 187.8 million US dollars need to be added to this last figure, as this sum falls outside of the said plan, but nevertheless constitutes funding coming to the DRC. As a result, as part of the OCHA DRC Humanitarian Response Plan for 2021, 1.24 billion US dollars were still needed on 30 November 2021, which is the equivalent of 62.6% of the total requirements of the plan.

21. The Humanitarian Response Plan further indicates that in 2021, 72.61% of the funds originated from the United Nations, while 27.39% came from NGOs. As far as contributions to the humanitarian fund were concerned, in 2021, 52.1 million US dollars were received from states. As far as specific clusters are concerned, this plan also stresses out that 831 million US dollars are still needed for the purposes of food security, 260 million US dollars for nutrition, 187 million US dollars for health, 134 million US dollars for protection, 120 million US dollars for shelters, 109 million US dollars for refugee assistance and 72 million US dollars for education.

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<sup>224</sup> United Nations Office for the Coordination of Humanitarian Affairs, Principles of engagement for emergency humanitarian assistance in the Democratic Republic of Congo, 25 January 1999, accessible at <https://reliefweb.int/report/democratic-republic-congo/principles-engagement-emergency-humanitarian-assistance-democratic>

<sup>225</sup> United Nations, Resolution adopted by the General Assembly on 25 September 2015, Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1), accessible at [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_70\\_1\\_E.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf)

<sup>226</sup> See e.g. the statement of the Danish Refugee Council in relation to UN Sustainable Development Goals specifically listing those principles, accessible at <https://drc.ngo/about-us/who-we-are/un-sdgs/>

<sup>227</sup> United Nations Office for the Coordination of Humanitarian Affairs, *République démocratique du Congo, Plan de réponse humanitaire 2021 – Aperçu des financements*, 30 November 2021, accessible at [https://reliefweb.int/sites/reliefweb.int/files/resources/2021\\_rdc\\_financement\\_au\\_30\\_novembre.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/2021_rdc_financement_au_30_novembre.pdf) based on data from the Financial Tracking Service, accessible at <https://fts.unocha.org/appeals/1026/summary>

## ATTACHMENT 2 – BACKGROUND ON PROCUREMENT PROCESS

1. Except in the limited cases of direct implementation of reparations, i.e. when TFV staff implement applicable measures directly (as it was, for instance, the case for the payment of school fees as a form of reparations in *Katanga*, or the payments of the individual reparations awards in *Al Mahdi*), the Trust Fund relies on implementing partners for the implementation of its programmes, under both its assistance and reparations mandates. These implementing partners are, in most cases, structures and organizations, such as international or local NGOs, or international organizations operating in the region of implementation of the specific projects constituting the assistance or reparation programme.
2. For the selection of an implementing partner, under the currently applicable regulatory framework, the Trust Fund, is bound by the Procurement Standard Operating Procedures ('PSOP') and the Financial Regulations and Rules ("FRR"). The FRR govern *all* financial administration of the Court, except as may otherwise be provided by the Assembly of States Parties;<sup>228</sup> their application, by all ICC officials, is guided by two general principles: the principle of effective financial administration and the principle of the exercise of economy.<sup>229</sup>
3. Procurement functions are regulated by FRR rules 110.12 to 110.19 and include all actions necessary for the acquisition of property and all kind of services. Guiding principles in the conduct of procurement exercises include: best value for money, fairness, integrity and transparency; effective international competition; and (consideration of) the interest of the Court.<sup>230</sup> Unlike other supranational organizations, such as the European Union,<sup>231</sup> the ICC does not have, at the current state, specific grant award procedures different from goods, service and work procurement procedures.
4. Under FRR rule 110.15, procurement contracts have to be awarded on the basis of effective competition based on formal or informal methods of solicitation. Formal methods of solicitation are invitations to bid ("ITB") on the basis of advertisement, and requests for proposals ("RFP") by direct solicitation of invited potential suppliers. The informal method of solicitation consists of requests for quotation ("RFQ").<sup>232</sup> Resorting to either formal or informal solicitation depends on the monetary value of the goods or services to be procured. Exceptions to the use of methods of solicitations (sole sourcing procedure) are subject to a determination

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<sup>228</sup> FRR rule 101.1 (a)

<sup>229</sup> FRR rule 101.1 (c)

<sup>230</sup> FRR rule 110.12 (a) to (d)

<sup>231</sup> See, for instance, the practical procedure for European Union external action ([PRAG](#))

<sup>232</sup> FRR rule 110.15 (d)

by the Registrar in this sense provided any of the conditions listed under FRR rule 110.17, or under FRR rule 110.18 is met. Moreover, a Procurement Review Committee (“PRC”) has to render written advice to the Registrar on the procurement exercises leading to award *or amendment* of procurement contracts. Where the advice of the PRC is required, no commitment can be entered into before such advice is rendered.<sup>233</sup>

5. The different solicitation methods, as based on the purchase threshold value, and their applicable competition requirement are set by the Court’s PSOP and presented in the table below.<sup>234</sup>

Threshold Value (EUR)	Required Competition Level per Threshold Solicitation Method
EUR 3,000 and below	The Procurement Staff can determine the most effective solicitation method in the interest of the Court. This can be performed by direct buy from a catalogue or approach to vendors.
Above EUR 3,000 – EUR 10,000	The Procurement Staff shall invite three quotes if practically possible (documented if not) or sole source.
Above EUR 10,000 – below EUR 50,000	Restricted Bidding via prequalification/ EOI/ Agreed invitee list or public competitive bidding to be published on ICC/UN market place website or sole source.
EUR 50,000 and above	Restricted Bidding via prequalification/ EOI/ Agreed invitee list or public competitive bidding to be published on ICC/UN market place website or sole source.

6. Based on the above regulatory framework and in consideration of the nature and value of the services procured, for the selection of the partners that will implement its assistance and reparation programmes and provide the resulting services, the Trust Fund needs in most cases to resort to formal methods of solicitations, specifically to procurement exercises mostly on a two-stage bidding procedure: pre-qualification (first stage) and tendering (second stage). In the first stage, the Trust Fund needs to prepare – with the assistance and support provided by the Registry’s Procurement Unit – a Request for Expression of Interest (“REoI”) and publish it on the ICC website. The REoI will inform potentially interested bidders of the procurement opportunity and invite them to express their interest accordingly by submitting an Expression of Interest (“EOI”). The purpose of the REoI is thus to identify organizations that intend to participate in the solicitation and to comprise a list of pre-qualified organizations (so-called ‘Short-list’) that are technically and financially capable to implement the activities for which

<sup>233</sup> FRR rule 110.14 (a) and (c)

<sup>234</sup> PSOP, pp. 11, 12.

the specific REoI was published. Only organizations from the Short-list are later invited to submit their Technical and Financial Proposals (during tendering, or the second phase).

7. The REoI as a preliminary step of the solicitation process shall be carefully considered within the timeline of the overall procurement. In order for REoIs to reach enough potentially interested organizations, including – as it is often the case for Trust Fund’s potential implementing partners - in situations and areas in a dire context (such as that of Ituri in the DRC) the REoI needs to remain published for a long period of time, usually one month. Additionally, considering the context of operations and the specificity of the services sought, Trust Fund staff always needs to conduct intensive outreach efforts to ensure that the REoI reaches potentially interested and capable organizations. Therefore, a mere publication of the REoI on the ICC website (or even on the UN Market Place website) does not suffice to ensure that potentially interested, capable and existing organizations in the regions be aware of it and apply.

8. Upon receipt of the EOIs from interested organizations, the Trust Fund must review and evaluate them against the requirements and the criteria set in the REoI. These criteria allow for disqualifying organizations that are not eligible *prima facie* and may include *inter alia* the ability to produce a recent audit report, previous experience in similar assignment(s), or proof of their legal registration. Upon review and evaluation of the EOIs, which usually takes one month, the Trust Fund prepares a list of pre-qualified organizations (the Short-list) which closes the first stage (pre-qualification), whose usual total duration is thus three months.

9. At the beginning of the second stage (tendering), the Trust Fund needs to prepare the Scope of Work (“SOW” - *cahier des charges*, in French), and issue a Request for Proposal (“RFP”) addressed to pre-qualified organizations; this usually requires up to two months. The SOW is a document presenting and detailing the expected activities and results that the selected organization will have to carry out and attain. The RFP is a set of tendering documents presenting, in addition to the SOW, budgeting and reporting requirements, guidelines and templates, and the applicable regulatory framework. Typically, a RFP contains eight to ten different pieces of documentation, for a total of 60 to 100 pages. Again, RFPs are prepared by the TFV staff and distributed to the short-listed organizations with the assistance of the Registry’s Procurement Unit. A sufficiently long deadline (usually four to eight weeks) is left to short-listed organizations to assemble the requested information and documents, including technical and financial proposals. Upon receipt of the proposals, the Trust Fund must evaluate them (through an Evaluation Committee of three staff members) based on the requirements set out in the RFP. The members of the evaluation committee shall prepare and Technical and

Financial Evaluation Report with included a recommendation on the contract award. The development and finalization of this evaluation typically requires five to seven weeks.

10. Upon selection of one or more organizations and based on the Evaluation Report, the Trust Fund must present the results of its selection before the Procurement Review Committee. The PRC is mandated to review all procurements conducted at the Court and is composed of staff members from various sections of the Court whose main post does not lie with the PRC. [REDACTED]. Following the PRC hearing, the PRC issues a recommendation to the Registrar on contract awarding.

11. Finally, on the basis of the PRC recommendation, the Trust Fund can enter into contractual negotiation with the selected organization. This negotiation is conducted with the assistance of the Registry Legal Office and takes, as an estimation, [REDACTED].

12. Formal solicitation requirements know a few exceptions, as mentioned above, set forth under FRR rules 110.17 and 110.18; this simplified process is referred to as sole sourcing. However, these exceptions, even when applicable, do not result in a considerable shortening of the contracting time - and it is not necessarily the objective of these exceptions. Sole sourcing a service simply dispenses the Trust Fund from issuing an REoI. However, a RFP, and thus a SOW, must be sent to the identified organization, its proposal must be evaluated, and the PRC must consider it and issue a recommendation. Additionally, the length of the contracting phase is not affected by resorting to sole sourcing instead of solicitation.

13. Lastly, regardless of the solicitation method, when an organization is selected as implementing partner, the award of the contract is approved by the PRC for a specific amount of funds, deliverable services and length. Amendments, such as an increase of funds beyond the maximum amount established in the contract against an extended scope of the services to be provided, cannot be implemented without written, positive advice by the PRC.

14. In the last few years, significant actions have been taken by the Trust Fund and the Registry jointly to streamline and ameliorate the efficiency of TFV procurement processes. A Joint Procurement Task Force (“JPTF”) was established by the Registrar and the TFV Executive Director in early 2020. The JPTF achieved that all pending procurement exercises for assistance and reparations projects requiring finalization in 2020 came to a close by 2020, thus absorbing the TFV procurement backlog. Additionally, the adoption by the Trust Fund, with support of the Registry, of an electronic signature procedure as of the beginning of 2021 reduced the time necessary for the signature of dozens of page-long agreements from many weeks into a matter of hours. These actions have been crucial in optimizing a procurement

process that, nonetheless, in abiding with the applicable regulatory framework, requires a minimum time of one year at least to be carried out.

15. The steps of the process for procuring services for the implementation by the Trust Fund of its assistance and reparation programmes, as outlined above, can be summarized and illustrated as follows:

- a. Preparation and publication of the Request for Expression of Interest (REoI);
- b. Search for expressions of interest;
- c. Evaluation of the Expression of Interests (EOIs) received and preparations of Short-list of pre-qualified organizations;
- d. Development of Scope of Work (SOW) or technical specifications<sup>235</sup>;
- e. Preparation and publication of tender documents, i.e. Requests for Proposals (RFP) or Request for Quotations, (RFQ);
- f. Search for technical and financial offers: submission of RFP to short-listed organizations and deadline for their technical and financial proposals;
- g. Evaluation of proposals by TFV Evaluation Committee;
- h. Preparation of the technical and financial Evaluation Report by the Evaluation Committee for the Procurement Review Committee's (PRC) consideration;
- i. PRC assessment/approval of the Evaluation Report (including PRC Minutes);
- j. Contract preparation and negotiations;
- k. Electronic signature.

16. In conclusion, procuring complex services such as those necessary for the implementation of Trust Fund's assistance and reparation programmes takes a full year at best for the procurement process only, followed by the contract preparation and negotiations.

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<sup>235</sup> Developing SOW and RFP can be done at the same time.

## VIII. ATTACHMENT 3 – LIST OF ABBREVIATIONS AND SHORT FORMS

[REDACTED]	[REDACTED]
ASP	Assembly of States Parties
ART	Antiretroviral therapy
[REDACTED]	[REDACTED]
CLR1	Common Legal Representative of the Former Child Soldiers
CLR2	Common Legal Representative of the Victims of the Attacks
CLRs	Common Legal Representative of the Former Child Soldiers and Common Legal Representative of the Victims of the Attacks
DIP	Draft Implementation Plan
EOI	Expression of interest
FARDC	Armed Forces of the DRC
FCSP	Former child soldiers programme (IDIP)
Former Child Soldiers	Child soldiers, including child soldiers having suffered sexual and gender-based crimes, their children born out of rape and indirect victims as defined by the Trial Chamber
Former Child Soldiers/SGBV	Former child soldiers who experienced sexual violence during the time spent in the Armed Forces of the Union des Patriotes Congolais/Forces Patriotiques pour la Libération du Congo
FRR	ICC Financial Regulations and Rules
GDP	Gross domestic product
IDIP	Initial Draft Implementation Plan
IGA	Income generating activities
IGO	Inter-governmental organizations

IOM	International Organization for Migration
IP	Implementing partner
ITB	Invitations to bid
JPTF	Joint Procurement Task Force
LRV	Legal representatives of victims
MONUSCO	United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo
M&E	Monitoring and evaluation
NGO	Non-governmental organisation
OTP	Office of the Prosecutor
OPCV	Office of Public Counsel for Victims
PMP	TFV performance monitoring plan
PRC	Procurement Review Committee
PSOP	Procurement Standard Operating Procedures
PTSD	Post-traumatic Stress Disorder
RCD-K/ML	Rassemblement Congolais pour la Démocratie Kisangani Mouvement de Libération
REoI	Request for expression of interest
RFP	Requests for proposals
RFQ	Request for quotations
SGBV	Sexual and gender-based violence
SOW	Scope of work
STD	Sexually transmitted diseases
Trial Chamber	Trial Chamber II
Trust Fund or TFV	Trust Fund for Victims
UNDP	United Nations Development Programme
[REDACTED]	[REDACTED]
UNHCR	United Nations High Commissioner for Refugees

UNICEF	United Nations Children's Fund
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UPC/FPLC	Armed forces of the Union des Patriotes Congolais/Forces Patriotiques pour la Libération du Congo
USD	United States dollars
V2AP	Victims of the Two Attacks Programme
VAMS	Victims Participation and Reparations Section database
VPR	Registry staff from the field office
VPRS	Victims Participation and Reparations Section
[REDACTED]	[REDACTED]